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A DIGEST

OF THE

DEATH DUTIES

(ALPHABETICALLY ARRANGED)

WITH NUMEROUS EXAMPLES ILLUSTRATING THEIR INCIDENCE,

AN INDEX OF TITLES, AND AN APPENDIX

OF

THE CUSTOMS AND INLAND REVENUE ACTS, 1880, 1881, 1888, 1889;
THE INTESTATES' ESTATES ACT, 1890;
AND THE FINANCE ACTS, 1894, 1896, 1898.

BY

A. W. NORMAN, B.A., B.Sc. Lond.

(OF THE LEGACY AND SUCCESSION DUTY OFFICE),

AUTHOR OF "DEATH DUTY TABLES," ETC.

SECOND EDITION

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PREFACE TO THE SECOND EDITION.

THE second edition of this work, as announced on the title-page, takes the form of an alphabetical arrangement.

Notwithstanding the many excellent text-books on the subject, the extremely involved and complicated character of the Death Duties has almost rendered a supplementary work in this form a matter of necessity.

The examples supplied are mainly the simple and oft-recurring types. The example given on the next page is one of a type of cases which are too cumbrous and complicated to print.

Every attempt has been made in these pages to avoid debateable questions, and to restrict the subject-matter to settled official practice.

I have to express my thanks to many of my colleagues for important hints, and to most, if not all, for their indulgent and generous criticism of the first edition of this work.

I am also deeply indebted to my colleague, Mr. E. Heard, for valuable help in the revision of this work during its passage through the press.

Example.

W. (intended wife) by marriage settlement (Sept. 20, 1841) settles a fund upon the following limitations :—

To H. (intended husband) for life (*ob.* 1877), remainder to W. (intended wife) for life (*ob.* 1898), remainder equally among their children, A., B., C., D., E.

A.	B.	C.	D.	E.
$\frac{1}{5}$ = £1705 7 8 less £1202 6 0* ——— £503 1 8 (£500).† ———	(*ob.* 1875, intestate). No Estate Duty. "Dodington Case." H. took B.'s $\frac{1}{5}$ as his sole next-of-kin, 1 per cent. Legacy Duty payable. But the $1\frac{1}{2}$ per cent. Succession Duty here payable excuses the 1 per cent. Legacy Duty. "Littledale Case."	(*ob.* 1873, testate). No Estate Duty. "Dodington Case." Share bequeathed to C.'s sister. $1\frac{1}{2}$ per cent. Succession Duty here payable, and 3 per cent. ($-1\frac{1}{2}$ per cent.) Legacy Duty under C.'s will. "Littledale Case."	(*ob.* 1857). No Estate Duty. "Dodington Case." Probate Duty paid excuses the $1\frac{1}{2}$ per cent. Succession Duty, otherwise here payable. "Haygarth Case." Succession Duty at $1\frac{1}{2}$ per cent. payable, however, on £200 advanced to D. in his lifetime, which of course was before the Finance Act.	(*ob.* 1879, intestate). No Estate Duty. "Dodington Case." $1\frac{1}{2}$ per cent. Succession Duty on (*a*) sums advanced; (*b*) fund which paid Probate Duty. Next-of-kin are mother (1 per cent.), brother (3 per cent.). The Legacy Duty at 1 per cent. excused by the $1\frac{1}{2}$ per cent. Succession Duty and 3 per cent. ($-1\frac{1}{2}$ per cent.) Legacy Duty payable by the brother. "Littledale Case."

* Advanced before the Finance Act, 1894, and therefore exempt from Estate Duty; but liable to $1\frac{1}{2}$ per cent. Succession Duty.

† The adjusted value of the part of the share liable to Estate Duty.

INTRODUCTION.

Of the seven Death Duties now in existence, three—the Probate, Account, and Temporary Estate Duties, are only temporary in character. Of the remaining four, the New Estate Duty and the Settlement Estate Duty (which is only a further Estate Duty, and relatively of but little fiscal importance) were the creations of the Finance Act, 1894, while the Legacy Duty is more than a century old, and the Succession Duty (except as modified by the Finance Act) dates as far back as 1853. Speaking broadly, the duties may be subdivided into Stamp Duties and Differential Duties. The former comprise the Probate Duty and Account Stamp Duties (expiring duties), and the New Estate Duty, by which the two former are practically superseded. The latter, the Legacy and Succession Duties.

The tax under the head of Stamp Duties is imposed at once on the property liable thereto, and is not regulated by the Amount which ultimately passes to the beneficiaries; while the Differential Duties depend upon the amount actually distributed, and are further varied by the degree of relationship in which the legatee, successor, or donee stands towards the testator, settlor, or donor, and are collected, not necessarily at once, but when and as the individual interest of the recipient falls in. The Death Duties doubtless owe their lugubrious title to the fact that they are only exigible in respect of property passing by, or with reference to, a death.

The Probate Duty is an *ad valorem* Stamp Duty on the grant of probate or administration by virtue of which the personal property of the deceased in this country is realized and collected. Its incidence depends upon the local situation of such property, the duty not being payable upon any assets of the deceased which are beyond the jurisdiction of the Court of Probate at the time when the right to the duty attaches.

The amount of the duty depends upon the value of the property, with accretions, at the date of the grant, and is payable by means of stamps, and not in money.

This Duty (which is only now payable on property where the owner has died before August 2, 1894) is the most ancient of all the Death Duties, and has had a life history of exactly two hundred years, having been first

imposed in 1694, on estates over £20 in value. The duty was granted for four years only "towards carrying on the war with France," but was reimposed in 1698, when the tax was extended from five shillings to ten shillings. It was not till about eighty years afterwards (in 1779) that the first attempt was made to introduce an *ad valorem* scale, but even then the maximum duty payable (50*s.*) was exigible only in respect of estates of and above £300 in value. The idea was borrowed (*a*) from the Dutch, to whose fiscal system of taxation (which had been for some time in existence) Adam Smith in his "Wealth of Nations" has called special attention.

"In Holland," says Adam Smith, "there are both Stamp Duties and duties upon registration, which in some cases are, and in some are not, proportioned to the value of the property transferred. All testaments must be written upon stamped paper, of which the price is proportioned to the property disposed of, so that there are stamps which cost from threepence or three stivers a sheet, to three hundred florins, equal to about twenty-seven pounds ten shillings of our money. If the stamp is of an inferior price to what the testator ought to have made use of his succession is confiscated. This is over and above all their other taxes on succession. Except bills of exchange and some other mercantile bills, all other deeds, bonds, and contracts are subject to Stamp Duty. This duty, however, does not rise in proportion to the value of the subject."

From 1779 to 1804, a period of a quarter of a century, the duty was extended no less than seven times (that is on the average once every three and a half years), when the maximum duty payable became successively £2 10*s.*, £6 10*s.*, £20, £40, £60, £1000, and £6000, a progressive increase which can only be regarded as truly phenomenal. Eleven years later, the year of Waterloo, the maximum duty was still further increased, and the limit then fixed (£15,000 where the deceased died testate, £22,500 where he died intestate) remained stationary until after the expiration of a period of nearly half a century, as will appear from the subjoined table.

		£		Maximum duty payable.	Per centage increase.
1694	Estates over	20	in value	5*s.* only	
1698	„ „	20	„	10*s.* only	100
1779	„ „	300	„	50*s.* only	400
1783	„ „	1000	„	£6 10*s.*	160
1789	„ „	5000	„	£20	207
1795	„ „	10,000	„	£40	100
1797	„ „	10,000	„	£60	50
1801	„ „	100,000	„	£1000	1600 (approx.)
1804	„ „	500,000	„	£6000	500
1815	„ „	1,000,000	„	£15,000 (testate)	150
				£22,500 (intestate)	275

In 1859 the limit fixed in 1815 was repealed, and a duty was imposed of £1500 upon probates, and £2250 upon Letters of Administration for

(*a*) See Buxton and Barnes' "Handbook to the Death Duties."

every £100,000 and any fractional part of £100,000, over £1,000,000, in respect of estates exceeding that amount.

It will thus be seen that an estate of £500,000 would have paid only £40 Probate Duty in 1795, whereas nine years later (in 1804) no less a sum than £6000 would have been exigible.

The Account Stamp Duty was imposed in 1881 by Mr. Gladstone with a view to prevent evasions of the Probate Duty, and (as amended in 1889) extended mainly to donations *mortis causâ*, gifts *inter vivos* within twelve months of the death of the donor, and certain voluntary settlements and policies of assurance.

Its effect as a buttress to the Probate Duty was evidenced by the steady increase in the returns since 1881.

The Estate Duty practically superseded the existing Stamp Duties and imposed a Stamp Duty on all property, real or personal, free or settled, wherever situate, subject to certain limitations in the case of foreign property.

Of the Differential Duties the Legacy Duty is a tax payable upon moveable property, and differs (*inter alia*) from the Probate Duty in that it is a tax upon distribution, while the latter is a tax upon collection. It is confined to gifts made by will, shares or residues of the personal estates of intestates, and donations *mortis causâ*, and to property, either of a purely personal description, or which is so disposed of as to devolve to the beneficiaries in that character.

Its incidence depends upon the domicile of the deceased.

Its amount depends upon the value of the bequest and upon the degree of consanguinity existing between the legatee and the deceased, and is payable in money upon receipt or retainer by or for the use of the legatee.

The Succession Duty Act practically supplemented the Legacy Duty Acts, and made liable to the duty all successions (not already liable to Legacy Duty) to both real and personal property, and whether passing under settlement or will, or by descent, intestacy or survivorship.

Its amount depends upon the value of the succession, and upon the degree of consanguinity existing between the successor and the predecessor, and is payable in money, in the case of personal property upon receipt or retainer by or for the use of the successor, and in the case of "real property" by instalments, the first becoming due twelve months after the successor has become entitled in possession. This value, with certain exceptions, was (before the Finance Act, 1894), as regards successions to "real property," the capitalized value of an annuity (equal to the net annual value of the property) for the life of the successor, even where he took in fee.

Since the Finance Act, however, duty is payable upon the principal value of the succession where the successor is absolutely entitled, or "competent to dispose," but this value, in the case of purely agricultural

property, is not to extend beyond twenty-five years' purchase of the net annual value as ascertained according to the provisions of the Act.

It may be noted that the Differential Duties help to play an important part in the equitable distribution of Death Duty taxation, and, in some important respects, to soften the apparent harshness of its incidence. A certain amount of revenue has to be obtained from the duties, and though the principle of a simple *ad valorem* duty might fairly be regarded as economically scientific and of great fiscal convenience, yet it would, without doubt, have the effect of making the home and the family bear, in a much greater proportion than is now the case, the main burden of the tax; while collateral relations, charities and strangers in blood, in fact, all legatees other than residuary legatees, would come off scot-free.

This point may be aptly illustrated by an example, by no means an extreme case. A testator dies and leaves property worth, say, £60,000. He bequeaths the whole of it to his widow and children, subject to legacies amounting to £5000, to certain brothers and sisters, and £5000 to various charities.

The Estate Duty payable is £3000, viz. 5 per cent. on £60,000. The Legacy Duty is £650, being £150 (3 per cent. on £5000) on the fund passing to deceased's collateral relations, and £500 (10 per cent. on £5000) on the charitable bequests.

Abolish the consanguinity scale, and the whole duty, £3650, would have to be borne by the widow and children, an increase of their burden to the extent of at least 20 per cent.

The law has recognized in the "consanguinity scale" the relation in which the beneficiary stands to the source of bounty. "It is not at all unnatural to hold," says Mr. Gladstone, in introducing a finance bill, "that children, and those who are analogous to children, have a natural expectancy; and that having that expectancy, they are not fit subjects for taxation to the same extent on inheritance as strangers."

This "natural expectancy" is recognized in the statutes of distribution which govern the devolution of an intestate's personal estate, and which may be said to express the moral sense of the community.

In fact, every European State that bases its code upon the civil or Roman law, practically recognizes this principle, by limiting in favour of the widow and children the testator's power of free distribution.

Mr. Lowe, in 1871, attempted to revise the consanguinity scale. "I am not," says he, "a great admirer of the scale in the abstract. The true basis of taxation is equality, because it, in the first place, renders the incidence more just, and in the second place, lighter, whereas, under this scale, you have persons who receive the same benefit, but who pay differently for it." The argument based on "natural expectancy" had, apparently, but little force with Mr. Lowe, and so he proposed to tax lineals at the rate of 2 per cent. (in lieu of 1 per cent.), and brothers,

sisters, and other descendants at the rate of 3½ per cent. (instead of 3 per cent.), while collaterals further removed and strangers in blood were to remain unaffected.

As might have been anticipated, the proposal met with great opposition both in the House of Commons and in the country, and it was withdrawn, Mr. Disraeli declaring that the Chancellor of the Exchequer had "put himself in entire opposition to the traditions and even the passionate convictions of the country, and had identified himself with a principle of taxation which had never been recognized by the law of any State, ancient or modern."

In 1885, Mr. Childers proposed (*inter alia*) to impose a Stamp Duty on settled personalty; but, as a set-off to exemption from the proposed imposition, realty (except where directed to be sold), and annuities charged upon realty, were to pay an additional Legacy or Succession Duty in the form of an increase of 3 per cent. to the then existing differential rates.

Strangers in blood would thus have had to pay at the rate of 13 per cent. The scheme was, however, ultimately rejected, and led to the resignation of the Government. In 1888, Mr. Goschen made Real Estate and charges thereon, in view of their exemption from any Stamp Duty, pay an additional differential rate of ½ per cent. (in the case of lineals), and of 1½ per cent. (in the case of collaterals and strangers). This increase, which was only temporary in character, has been abolished by the Finance Act, 1894, and the differential rates now stand in the position which they occupied eighty-three years ago, with the simple exception that lineals are now exempt altogether.

The differential rates thus appear to revolve in a circle. In 1796, lineals (issue and ancestors) did not come under the Legacy Duty Act, collaterals and strangers alone were liable. In 1805, lineal issue were made liable at the rate of 1 per cent., and later on, in 1815, lineal ancestors also. In 1894, after the lapse of nearly a century, lineals, as already stated, are again exempt.

Will the exigencies of the State ever require the circle to be again described? It was in 1804 that the maximum Stamp Duty then payable was increased fivefold; and yet, in the following year (1805), lineal descendants were first made liable to a Differential Duty.

The Differential Duties have, as we have seen, an important bearing on the equitable distribution of the Death Dues. They moreover indirectly fulfil another important function, frequently lost sight of, but one which that keen and subtle thinker, John Stuart Mill, was among the first to detect and emphasize.

The necessity to prepare accounts with full and accurate details of the property passing; the obligation to furnish full particulars as to title; to set forth and so place on record the names of the beneficiaries, afford a strong guarantee that the destination of the fund is secured (so far as an

account—a copy of which is always filed at Somerset House—can secure it) to the parties strictly and legally entitled.

An examiner of accounts, by the very force of his position, becomes an expert in questions of title and devolution, and the application of the equitable doctrines of separate use, conversion, ademption, election, and satisfaction in regulating the destination of a fund, whether settled or disposed of by Will, is a matter of daily occurrence at Somerset House.

Of estates which pay Estate Duty (and these broadly number about fifty-one thousand), practically two-thirds, or nearly thirty-five thousand, escape the Differential Duties altogether by virtue of special exemptions under the provisions of the Finance Act, 1894. It will thus be seen that, having regard to the fact that the Estate Duty, where payable, is practically always paid wholly by the residuary legatees (at any rate, so far as the deceased's free personal estate is concerned), every legatee other than a residuary legatee in the above thirty-five thousand cases, escapes the payment of any Death Duties at all.

Prior to 1894, both realty and settled personalty (except in the case of certain voluntary settlements) were exempt from a Stamp Death Duty Tax altogether, and Succession Duty was only payable on the capitalized value of an annuity (equal to the net annual value of the property) based on the successor's life, instead of on the principal value of the subject of the succession.

The main features of the Finance Act of 1894 may practically be summed up thus—

1. It taxed ALL property, real and personal, free or settled, English or foreign (limited in the latter case to property which, actually or potentially, had been previously liable to Legacy or Succession Duty, where the deceased died domiciled in this country).

2. It taxed the *principal value* of the property.

3. It extended the principle of GRADUATION.(*a*)

4. It practically introduced the principle of *aggregation*.

5. It afforded relief to a vast number of small estates, some 35,000 all told, or about 66 per cent. of the estates coming under the Death Duty Tax.

In conclusion, it may be noted as perhaps a remarkable coincidence that Death Duty finance is mainly the outcome of *fin de siècle* legislation.

(*a*) John Stuart Mill, though apparently opposed to a graduated Income Tax, was a decided supporter of a graduated Death Duty. "The principle of graduation (as it is called), that is, of levying a large percentage on a larger sum, though its application to a general taxation would be, in my opinion, objectionable, seems to me both just and expedient as applied to Legacy and Inheritance Duties. . . . To tax the larger incomes at a higher percentage than the smaller is to lay a tax on industry and economy; to impose a penalty on people for having worked harder and saved more than their neighbours. It is not the fortunes which are earned, but those which are unearned, that it is for the public good to place under limitation. A just and wise legislation would abstain from holding out motives for dissipating rather than saving the earnings of honest exertion." Mill's "Political Economy" (1865), vol. ii. p. 398 *et seq.*

The passing centuries seem to leave to the nations a legacy of discord, and so in 1694 we have the imposition of a Probate Duty to meet the war with France; in 1780, 1783, 1789, and 1796, the imposition and subsequent extensions of a scale of Legacy Duties, and in the period 1779 to 1804 an extension of the Probate Duty no less than seven times, to supply ways and means for another French war; and finally, in the period 1880 to 1898 a revision of the Death Duties no less than seven times coincident with a great increase in naval and military expenditure, which the unsettled state of Europe and the ominous outlook in the near and far East, have apparently rendered imperative.

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CONTENTS.

PAGE

TABLE OF CASES cited xvii

INDEX OF TITLES xxxi

Addenda et Corrigenda xxxix

Titles (Abatement—Younger Sons) 1–493

APPENDIX 495

i. Customs and Inland Revenue Acts, 1880, 1881, 1888, 1889 . . . 497

ii. Intestates' Estates Act, 1890 511

iii. Finance Acts, 1894, 1896, 1898 512

TABLE OF CASES.

A.

PAGE

Ackroyd *v.* Smithson 110, 236
Adams *v.* Fenrick 445
——— *v.* Kensington Vestry . . 100, 365
——— *v.* Lavender 410
Adv.-Gen. *v.* Anstruther 107
——— *v.* Blackburn's Trustees . 102
——— *v.* Hamilton 102
——— *v.* Oswald . 9, 10, 259, 284, 342
——— *v.* Ramsay's Trustees . . 102
——— *v.* Smith 102
——— *v.* Williamson 101
Agar *v.* George 120
Airey *v.* Bower 360
Aitchison *v.* Dixon 409
Alexander *v.* Brame 317
Alfreton's Trusts, Re 244
Allan *v.* Gott. 309
Allen *v.* Callow 126
Alwyn's Trusts, Re 55
Anderson *v.* Anderson 488
Andrew *v.* Andrew 471
Andros *v.* Andros 248
Angermann *v.* Ford 196, 260
Angerstein, Re 237
Ansley *v.* Cotton 225
Anthony, Re 299
Aplin's Trust, Re 177
Archer *v.* Kelley. 120
Ardern, Mary, *in bonis* 275
Armstrong *v.* Burnet 445
Arnold *v.* Arnold. 170
——— *v.* Chapman 73
——— *v.* Dixon 111
Arundell *v.* Bell 234
Ashburner *v.* McGuire 445
Ashton *v.* Ashton 446
Ashworth *v.* Munn 317
Askew *v.* Rooth 82
Asten *v.* Asten 474

PAGE

Aston *v.* Wood 179
Atholl, Re 139
Atkinson *v.* Anderson 248
Att.-Gen. *v.* Abdy 128
——— *v.* Ailesbury, Marquis of 107, 300
——— *v.* Bagot 75, 206
——— *v.* Baker 371
——— *v.* Beech 56, 189
——— *v.* Booth 230
——— *v.* Bouwens . . 51, 59, 297, 381
——— *v.* Brackenbury . . . 161, 362
——— *v.* Braybrooke, Lord . . . 451
——— *v.* Brown 337
——— *v.* Brunning . 51, 100, 174, 378
——— *v.* Campbell 171, 353
——— *v.* Cavendish . . 9, 164, 259, 342
——— *v.* Cecil, Lord Eustace . 322, 371
——— *v.* Chapman 386, 481
——— *v.* Charlton 364
——— *v.* Christ's Hospital . . . 77
——— *v.* Cleave 125
——— *v.* Cullen 205
——— *v.* Dardier . . 289, 343, 446, 469
——— *v.* Delany . . . 75, 76, 205, 414
——— *v.* Dimond . . 51, 296, 298, 381
——— *v.* Dodd 107
——— *v.* Dodington . . 166, 189, 201
——— *v.* Dowling 369
——— *v.* Edmunds 123
——— *v.* Ellis 267
——— *v.* Fairley 98
——— *v.* Felce 171
——— *v.* Fitzjohn . . 129, 206, 353
——— *v.* Floyer . . 322, 358, 369, 371
——— *v.* Gardner. 322
——— *v.* Gell 11
——— *v.* Giles . . . 292, 342, 388
——— *v.* Gosling 419, 481
——— *v.* Grey 419
——— *v.* Hallett . 86, 254, 347, 485

PAGE

Att.-Gen. *v.* Hancock 340, 422
——— *v.* Harley 317
——— *v.* Henniker, Lord . 32, 92, 360
——— *v.* Hertford, Marquis of . . 283
——— *v.* Heywood 419, 480
——— *v.* Higgins. 86, 297, 378, 380, 448
——— *v.* Holbrook 136, 214, 284, 286, 410
——— *v.* Holford . . . 101, 340, 422
——— *v.* Hope 51, 133, 203, 296, 377, 440
——— *v.* Hope's Executors . . 76, 205
——— *v.* Hotham, Lord 329
——— *v.* Hubbuck . 112, 333, 336, 380
——— *v.* Jackson . 32, 170, 284, 413
——— *v.* Jacobs-Smith 481
——— *v.* Jones . . 284, 381, 399, 464
——— *v.* Leconfield, Lord . . . 19
——— *v.* Littledale . 126, 294, 424, 457
——— *v.* Lomas . . . 101, 110, 380
——— *v.* Loscombe 340, 422
——— *v.* Loyd 449
——— *v.* Malkin 124
——— *v.* Mander . . 71, 280, 388, 423
——— *v.* Mangles . 26, 102, 103, 328
——— *v.* Manners 340, 422
——— *v.* Maule 371
——— *v.* Maxwell 125
——— *v.* Metcalfe 340, 422
——— *v.* Meyrick 76, 317
——— *v.* Middleton, Lord . . . 57
——— *v.* Milner 73
——— *v.* Mitchell 367
——— *v.* Montefiore 118, 163
——— *v.* Munby 161, 317
——— *v.* Murray 119, 143
——— *v.* Napier 252
——— *v.* New York Breweries Co. 194, 449
——— *v.* Noyes 58, 419
——— *v.* Pickard 73, 360
——— *v.* Pratt 51, 203, 252, 297, 378, 464
——— *v.* Rathdonnell . . . 93, 482
——— *v.* Robertson 181
——— *v.* Rowsell 128
——— *v.* Rushton 26, 423
——— *v.* Sefton, Lord 28
——— *v.* Sharp 91
——— *v.* Sibthorp . . 102, 267, 368
——— *v.* Simcox 102
——— *v.* Smith & Cocks 379, 406, 414, 469
——— *v.* Smythe 369
——— *v.* Strange 246
——— *v.* Sudeley, Lord 298
——— *v.* Theobald 330, 480
——— *v.* Twyford 108
——— *v.* Upton 336, 368
——— *v.* Walker 188

PAGE

Att.-Gen. *v.* Wendt 481
——— *v.* Wenham . . 308, 341, 442
——— *v.* Wolverton, Lord . . . 488
——— *v.* Wood . . . 200, 340, 422
——— *v.* Worrall 419
——— *v.* Wyndham 104, 328
——— *v.* Yelverton 370
Atwell *v.* Atwell 103
Audsley *v.* Horn 234
Ayres, Re 15

B.

Badart's Trusts, Re 171
Badham *v.* Mee 36
Bailey *v.* Tindall. 85, 348
Baker *v.* Martin 196
——— *v.* Sebright 329, 455
——— *v.* Sutton 317
Banks *v.* Scott 106
Barber, Re 126, 409, 442
Barclay *v.* Wainwright 10
Barden, In the Goods of 485
Barham *v.* E. of Thanet. 144
Barker, Re 105, 367
Barksdale *v.* Gilliat 224
Barnes *v.* Patch 208
——— *v.* Rowley 35
Barnet *v.* Barnet 471
Barrack *v.* McCullock 232
Barrington *v.* Tristram 260
Barton *v.* North Staffordshire Railway Co. 82
Bate *v.* Bate 51
——— *v.* Payne 9, 197, 259, 342
Bates *v.* Mackinley 445
Bayard, *in bonis* 194
Bayley's Settlement. 493
Bayley *v.* Bishop 35
Beauclerk *v.* Mead 99
Beaumont, Re 168
Beaumont's Trusts 317
Beaver *v.* Master in Equity, etc., of Victoria 337
Bebeze *v.* Mann 14
Beckford *v.* Beckford 265
Bective *v.* Hodgson 110
Belaney *v.* Belaney 307
Bell, In re Goods of. 20, 382
Benham's Trusts, Re 131
Bennett, Abraham, *in bonis* . . . 275
——— *v.* Bennett 266, 442
Benson *v.* Benson 402, 403
Benyon *v.* Benyon 126
Berry *v.* Berry 80

PAGE

Bignold *v.* Giles 36
———, Re 260
Billson *v.* Crofts 55
Binney *v.* Mutrie 335
Bird *v.* Luckie 323
——, Re 103
Birt *v.* Birt 422
Bishop *v.* Curtis 383
Bissett *v.* Antrobus 227
Blachford *v.* Worsley 47
Blacket *v.* Lamb 178
Blackwood *v.* **Reg.** 135
Blake, Re 232
——— *v.* Shaw 234
Blandy *v.* Wigmore 119
Blasson *v.* Blasson 80
Bligh *v.* Brent 399
Bliss *v.* **Putnam** 342, 388
Blisset *v.* Daniel 335
Blockley, Re 244
Blount *v.* Barrow 173
Blower, Re 320
Bloxam *v.* Favre 4, 486
Blundell, Re 306
Blyth *v.* Fladgate 331
Boards, Re 310
Boddington, Re 164, 484
Bodger *v.* **Arch** 351
Bond *v.* Simmons 409
Bootle *v.* Blundell 137, 309
Boraston's Case 470
Boreham *v.* Bignall 484
Bothamley *v.* Sherson 445
Bouch, Re 60
Boughton *v.* Boughton 179, 309
Bourne, Re 45, 74, 348
——— *v.* Brandreth 176
Bowen, Re 305
Bowra *v.* **Rhodes** 15, 33, 292
Box *v.* Barrett 177
Boyes, Re 330
Brace, Re 360
Bradford *v.* Young 96
Braund *v.* E. of Devon 317
Braybrooke, Lord, *v.* **Att.-Gen.** 29, 94, 143, 366, 368, 410, 451
Breadalbane *v.* **Lord-Adv.** 158
Breton *v.* Rockett 78
——, Re 232
Brett *v.* Brett 488
Brice *v.* Stokes 196
Bridge *v.* Abbott 415
——— *v.* Brown 145, 227
Bridger, Re 76
Briggs, Re 1, 413

PAGE

Bright *v.* Larcher 309
Bristol *v.* Hungerford 110
Bristowe *v.* Bristowe 445
——— *v.* Ward . . . 129, 177, 178
Broadbent *v.* Burrow 78
Broadwood's Settled Estates . . . 314
Brodie *v.* Barry 178
Bromley *v.* Brunton 79, 173
Brook *v.* Badley 317
Brooker *v.* Pearson 55
Brookman's Trust, Re 278
Broughton *v.* Broughton 120
Brown *v.* Brown 179
Browne *v.* Collins 335
——— *v.* Spooner 195
Browning *v.* Pike 485
——— *v.* Browning 335
Bryan *v.* **Mansion** 15, 342, 388
——— *v.* Twigg 36
Bubb *v.* Yelverton 196
Buckley *v.* Buckley 474
Bulkeley *v.* Stephens 164
Bunnett *v.* Foster 117
Burgess *v.* Vinnicombe 197, 442
Burnham *v.* Bennett 409
Burrell *v.* Baskerfield 102
Burrows *v.* Cottrell 225
Burton's Trust, Re 10
Butcher *v.* Butcher 120
Butler *v.* Butler 114
——— *v.* Lowe 81
Butler's Will, Re 314
Butt's Case 36
Byne *v.* Currey 225
Byng *v.* Byng 426
Byram *v.* Tull 31, 454

C.

Cadogan, Re 314
Cain *v.* Moon 173
Callanane *v.* **Campbell** 171, 353
Calvert *v.* Sebbon 225
Cameron and Wells, Re . . . 480, 484
Campbell *v.* Wardlaw 308
Campbell's Policies, Re 121
Capron *v.* Capron 44
Cardigan *v.* Curzon Howe 435
Carr *v.* Griffiths 44
—— *v.* Ingleby 1
—— *v.* Roberts 379
Carter *v.* Silber 177
Cartwright *v.* **Del Balzo** 46
Carver *v.* Bowles 178
Casborne *v.* Scarfe 182

PAGE

Caton *v.* Rideout 232
Cavan *v.* Pulteney 179
Cawthorne, Re 116, 349
Chalmers *v.* Wingfield 167
Chapman *v.* Brown 317
——— *v.* Hart 54
——— *v.* Reynolds 314
Chapman's Trusts, Re 125
Chapple *v.* Cooper 227
Charlton *v.* Att.-Gen. 367
Charrière, Re 176, 484
Chatfield *v.* Berchtoldt . 36, 53, 284, 381
Chatteris *v.* Young 225
Chesham, Re 177
Chester *v.* Chester 228
Chichester *v.* Bickerstaffe 403
Chick *v.* Blackmore 60
Cholmondeley, Re 283, 361
Christian *v.* Whittaker 120
Cigala's Settlement Trusts, In re . . 172
Clark *v.* Taylor 77
——, Re 5
Clarke, Re 80
—— *v.* Butler 446
——— *v.* Clarke 81
—— *v.* Franklin 99, 111
——— *v.* Sewell 137
——— *v.* Wright 481
Clay *v.* Clay 196, 449
Clay and Tetley, Re 137
Claydon *v.* Green 273
Clayton *v.* Wilton, Lord 481
Cleghorn *v.* Burrows 80
Clement *v.* Cheeseman 173
Clements *v.* Ward 306
Clifford *v.* Commissioners of Inland Revenue 94
Clifford *v.* Lewis 136
Cline's Estate, Re 44
Coates *v.* Needham 36
Cochrane *v.* Moore 231
Cockerell *v.* Earl of Essex 225
Cockroft, Re 101
Cogan *v.* Stephens 111
Collingwood *v.* Pace 235
——— *v.* **Row** . . . 100, 328, 377, 380
Commissioner of Charitable Donations *v.* Walsh 306
Commissioner of Stamps *v.* Hope . 135, 296
Commissioners of Inland Revenue *v.* Harrison 148, 411
Compton *v.* Oxendon 307
Consett *v.* Bell 151
Constable *v.* Bull 233
Cook *v.* Culverhouse 74, 391, 447

PAGE

Cook *v.* Dawson 136
Cooke *v.* Turner 284
Cookson *v.* Cookson 402
——— *v.* Reay 103
Coombe *v.* Trist 340
Cooper and Allen's Contract, Re . 26, 321, 322, 344, 464
Cooper *v.* Cooper 178
——— *v.* Day 225
——— *v.* Macdonald 127, 192
——— *v.* Metropolitan Board of Works 234, 335
——— *v.* **Trewby** 26, 344, 388
Coote *v.* Boyd 126
Corbyn *v.* French 233, 317
Cordwell's Estate, Re 422
Cornwallis, Lord, In re 28
Costabadie *v.* Costabadie 301
Courtier, Re 250
Courtoy *v.* Vincent 224
Coventry *v.* Barclay 336
——— *v.* Coventry 120, 462
Cowley, Re 121, 140
———, **Earl, Re** 147, 319
——— *v.* Harstonge 103
——— *v.* Wellesley 116
Cox *v.* Bennett 306
Cox's Trusts, Re 44
Crabtree *v.* Bramble 402
Cradock *v.* Piper 197, 442
Crawhall's Trusts, Re 10
Creed *v.* Creed 1, 413
—— *v.* Henderson . . . 135, 144, 482
Cresswell, Re 235
——— *v.* Cresswell 488
Croft, Re 45, 147
Crossman *v.* The Queen 419, 479
Crow *v.* Robinson 36, 288
Cruse *v.* Barley 110
Cubbon, Re 303
Cuddon *v.* Cuddon 25, 347
Cullen *v.* Att.-Gen. for Ireland 76, 284, 434, 485
Culverhouse, Re 74, 391, 447
Cunningham, Ex parte 168
Currant *v.* Jago 265, 281
Currie, Re 224
Curteis *v.* Wormald 111
Curtis *v.* Hatton 214
——, Re 232

D.

Dallmeyer, Re 260
Darkin *v.* Darkin 47

PAGE

Darley *v.* Tennant 293
Davall *v.* The New River Co. 399
Davenport, Re 303
——— *v.* Coltman 109
Davies *v.* Goodhew 104
——— *v.* Morgan 446
Davis, Re 293
——— *v.* Kirk 60
Dawes *v.* Creyke 121
——— *v.* Tredwell 120
Dawkins *v.* Tatham 224
Dawson *v.* Hearn 35, 288
Day *v.* Day 64
—— *v.* Turnell 118
Dean, Re 27
Dearsley *v.* Middlewick 98
De Bonneval *v.* De Bonneval . . . 169
De Burgh-Lawson, Re 136
De Cordova *v.* De Cordova 326
De Fogassieras *v.* Duport 249
De Hoghton, Re 28, 413
De Lancey *v.* **The Queen** . . . 108, 408
Delaney *v.* Delaney 64
De Mestre *v.* **West** 480, 483
Dent *v.* Dent 249
De Rechberg *v.* **Beeton** 427
Detmold, Re 55
De Visme, Re 266
Dewar *v.* Maitland 178
Dickinson *v.* Dillwyn 121
Diggles, Re 365
Dixon *v.* Dawson 112
——— *v.* Gayfere 402
Dodgson, *in bonis* 17
Doe *v.* **Evans** 379
—— *v.* Vardill 248
Dorin *v.* Dorin 246
Douglas *v.* Andrews 10
——— *v.* Congreve 225
Dover *v.* Alexander 246
Downs *v.* Collins 64
Drake *v.* **Att.-Gen.** 362
Drant *v.* Vause 101
Drew *v.* Martin 265
Drinkwater *v.* Falconer . . 13, 92, 445
Drury Lowe's Settlement, In re . . 5
Drury *v.* Smith 173
Duberley *v.* Day 304
Duchess D'Orléans, *in bonis* . . . 168
Dudson's Contract, Re 191
Duffield *v.* Elwes 152, 172
Dugdale *v.* **Meadows** . . 29, 85, 344, 347
Duke of Cleveland's Estate, Re . . 260
Dummer *v.* Pitcher 177
Duncan *v.* **Watts** 285, 287

PAGE

Duncan's Trustees *v.* **M'Cracken** . . 171
Dundas *v.* Wolfe-Murray 460
Durham *v.* Wharton 13
Durour *v.* Motteux 112
Durrant *v.* Friend 246

E.

Eager *v.* Furnivall . . . 127, 279, 451
Eagleton *v.* Horner 247
Earlom *v.* Saunders 103
Early *v.* Benbow 225
East *v.* Cook 178
Easum *v.* Appleford 2, 420
Eccles *v.* Cheyne 278
Eden *v.* Smyth 137
Edward *v.* Cheyne 232
Edwards *v.* Carter 177
——— *v.* Hall 317
——— *v.* Hammond 471
——— *v.* Jones 172, 173
——— *v.* West 100
Ekins *v.* Morris 136
Elliott, Re 306
——— *v.* Davenport 278
——— *v.* Dearsley 299, 310
Ellis *v.* Walker 446
Ellison *v.* Ellison 231
——— *v.* Thomas 493
Elwes, Re 21, 147, 250, 319
——— *v.* Causton 2
Emuss *v.* Smith 101
Evans, Re 72, 103, 104
——— *v.* Ball 103
——— *v.* Scott 357, 471
Everett *v.* Everett 137
Ewart 132
Ewin, Re 51, 170, 353
Eykin, Re 265

F.

Farrant *v.* Spencer 227
Farrer *v.* **St. Catherine's College** 2, 226, 287
Farthing *v.* Allen 233
Fearnside *v.* Flint 293
Featherstone's Trusts, In re . . . 80
Fernandes' Executors' Case . 297, 381, 448
Festing *v.* Allen 471
Field *v.* White 422
Fielder *v.* Hanger 17
Fischer *v.* **Earl of Seafield** . . 90, 342, 447
Fish, Re 74
Fisher *v.* Shirley 120
Fitch *v.* Weber 110, 121

PAGE

Flamank, Ex parte 232
Flanders *v.* Clarke 82, 105
Fletcher *v.* Ashburner 99
———, *in bonis* 272
Floyer *v.* Bankes . . 93, 301, 370, 427
Forbes *v.* Forbes 157
——— *v.* Jackson 170
——— *v.* Moffatt 307
——— *v.* Steven . . . 112, 284, 336, 380
Ford *v.* Batley 35, 288
—— *v.* Fleming 446
—— *v.* Ruxton 224
Fordyce *v.* Bridges 214
Forrest *v.* Forrest 265
Forth *v.* Chapman 95
Foster *v.* Bates 16
——— *v.* Foster 105, 111, 254
——— *v.* Ley . . 15, 197, 284, 287, 342
Fountain *v.* Tyler 445
Fowkes *v.* Pascoe 266
Fowler *v.* Garlike 474
Freke *v.* Carbery 12, 214, 249
Friend, Re 288
Fryer *v.* Morland 426
Fulford *v.* Fulford 278
Fytche *v.* Fytche 179

PAGE

Grant *v.* Wimbolt 36
Gratrix *v.* Chambers 1
Gray, Re 46, 74, 119
—— *v.* Earl of Limerick 357
Grayburn *v.* Clarkson 112
Green *v.* Britten 179
——— *v.* Symonds 78
Greenway *v.* Greenway 102
Greenwood, Re 33
Greville *v.* Brown 309
——— *v.* Greville 90, 342, 447
Grey *v.* Stamford 247
Gribble *v.* Webber 437
Grice *v.* Shaw 307
Griffiths *v.* Ricketts 111
——— *v.* Vere 11
Grimston, Ex parte 104
Grissell *v.* Swinhoe 179
Grosvenor *v.* Watkins 191
Grove's Trusts, Re 37
Gude *v.* Mumford 224
Gundry *v.* Pinniger 323
Gunn, In the Goods of 101, 272
Gunter *v.* Gunter 307
Gurney *v.* Gurney 488
Gyett *v.* Williams 310

G.

Gaitskell's Trusts, Re 233
Gally, *in bonis* 486
Galvin, Re 55
Gardiner *v.* Parker 172
Gardner *v.* Gardner 232
——— *v.* Hatton 445
Garrick *v.* Lord Camden 323
Gartside *v.* Silkstone Co. 152
Gaskin *v.* Rogers 350
Geck, Re 214
Gibson *v.* Bott 30
——— *v.* Way 120
Gilbert *v.* Bennett 301
Gillies *v.* Longlands 402
Gillman's Estate, In re 36
Gittings *v.* McDermott 277
Godsden *v.* Dotterill 224
Goldsmid *v.* Goldsmid 119
Goodenough, Re 260
Goodman *v.* Goodman 10
Goodman's Trust, In re 247
Goodwin *v.* Robarts 297
Gosling *v.* Gosling 232
Grant, Re 35
——— *v.* Grant 320

H.

Haigh, Re 442
Hale *v.* Sheldrake 232
Hales *v.* Freeman 197, 342
Haley *v.* Bannister 12
Hamilton *v.* Mills 409
Hancock *v.* Hancock 120
Hanson *v.* Graham 472
——— *v.* Miller 409
Harbin *v.* Darby 442
Harcourt, Re 231
Harding *v.* Glynn 365
——— *v.* Harding 70, 104, 348
Hardwick *v.* Thurston 278
Harford *v.* Browning 196
Harris, Re 285, 301
Harrison *v.* Borwell 70
——— *v.* Grimwood 472
——— *v.* Harrison . . . 51, 213, 317
Harvey *v.* Gillow 278
——— *v.* Stacey 81
Harwood *v.* Fisher 409
Hawkins *v.* Blewitt 173
Haygarth's Trusts, In re . 149, 235, 457
Haynes *v.* Haynes 105
Head's Trustees, Re 136

PAGE

Heal *v.* **Knight** 102, 398
Hearle *v.* Greenbank 254
Heath *v.* Chapman 78, 306
——— *v.* Nugent 1
——— *v.* Samson 169
Hebblethwaite *v.* Cartwright . . . 80
Henniker, Lord, *v.* **Att.-Gen.** . 32, 285, 360
Hensman *v.* Fryer 157, 420
Henton, Re 234
Henty *v.* Wrey 471
Hertford *v.* Lowther 13
Hervey-Bathurst *v.* Stanley . . . 176
Hewett, Re 271
——— *v.* Kay 173
Heygate *v.* Annesley 409
Hibbert *v.* Cooke 249
Hicks *v.* **Keat** 292, 342, 388
——— *v.* Ross 36
Hiddeigh *v.* Denysson 112
Higgins, Re 118
Hill *v.* **Atkinson** 340, 422
——— *v.* Potts 37
Hillas, Re 340, 422
Hills *v.* Hills 173
Hinton *v.* Priske. 445
Hoare *v.* Osborne . . 76, 314, 330, 464
Hobson *v.* Blackburn 272
——— *v.* Neale. 104
Hogg *v.* Cook 320
——— *v.* Jones 237
Holford *v.* Wood 126
Holloway *v.* Radcliffe 401
Holmes, Re 134
Holyland *v.* Lewin 278
Hooley *v.* Hatton 126
Hope *v.* Hope 127, 303
Horn *v.* **Coleman** 197, 308, 342
Hornsby *v.* Lee 409
Hoskin's Trusts, Re 341
Hoskins *v.* Matthews 168
Hotchkys, Re 249
Houghton *v.* Franklin 30
——— Hall Estate, Re . . . 237, 435
Houston *v.* Hughes 114
Howe *v.* Earl of Dartmouth 112, 160, 227, 260, 281, 412
———, **Earl,** *v.* **Lichfield, Earl of** . 70, 348
Hoyes *v.* Kindersley 232
Hudson *v.* Hudson 16, 281
Hull *v.* Christian 36, 196
——— *v.* Hull. 84
Hume, Re 76
Humphreys, Re 11
Hunt *v.* Stevens 379
Hunt Foulston *v.* Furber 288

PAGE

Hunter *v.* Dowling 335
Huntingdon *v.* Huntingdon . . . 303
Hutcheson *v.* Hammond 278
Hyett *v.* Mekin 99, 111, 328

I.

Ibbotson *v.* Elam 412
Idle *v.* Cook 238
Ingram *v.* Southen 233
Iredale *v.* Iredale 81
Isaacs, Re 100

J.

Jackson *v.* Jackson 126
———, Re 269
——— *v.* Talbot 254
Jacomb *v.* Harewood 16, 281
Jarman, Re 76
Jauncey *v.* Att.-Gen. 225
Jeffries *v.* Alexander 120
Jenkins, Re 409
Jenkinson, Re 370
Jennings *v.* **Bond** 342, 388
Jernyngham *v.* Herbert 239
Jervis *v.* **Wolferstan** . 118, 137, 143, 285
Jessop *v.* Watson 110
Johnson *v.* Arnold 102
——— *v.* Baker 145, 227
——— *v.* Johnson 278
——— *v.* Swann 317
Jones, Re 116, 422
——— *v.* Hensler 279
——— *v.* Howells 379
——— *v.* Mason 36
——— *v.* Ogle 44
——— *v.* Selby 173
——— *v.* Southall 360
Jones' Trusts, Re . . 159, 197, 341, 465
Joy, In re 66, 382
Jubber *v.* Jubber 301
Jull *v.* Jacobs 5, 488
Jupp *v.* Buckwell . . . 303, 453, 461
———, *in bonis* 176

K.

Kaye *v.* Laxon 235
Kelland *v.* Fulford 105, 111

PAGE

Kenlis *v.* **Hodgson** 111, 205
Kenny *v.* **Att.-Gen.** 76
Kerr *v.* Middlesex Hospital . . . 37
Kidney *v.* Coussmaker . . 100, 122, 179
Kilford *v.* Blaney 73
Kilner *v.* Leech 323
Kilpin *v.* Kilpin 330
——— *v.* Ratley 231
King *v.* Cleveland 415
Kirby *v.* Potter 446
Kirk, Ex parte 136
——— *v.* Kirk 92
Kirkman *v.* Booth 63
Kirkpatrick *v.* Bedford 127, 225
Kloebe, Re 213
Knox *v.* Wells 164

L.

Lacroix, *in bonis* 485
Laidley *v.* **Lord-Adv.** 296, 336
Laing *v.* Cowan 136
Lamb, Re 442
Lambert, In re 15, 380
Lancefield *v.* Iggulden . . 157, 420, 446
Langham's Contract, In re 388
Laurie *v.* **Clutton** 1, 179, 285
Lawes *v.* Bennett 100
Lawson, Re 212, 315
——— *v.* Stitch 445
Leake *v.* Macdowell 449
Lee *v.* Lee 13, 15
—— *v.* Pain 126
Le Grice *v.* Finch 445
Le Marchant *v.* **Commissioners of Inland Revenue** 148, 410
Lett *v.* Randall 36
Lewis *v.* Matthews 196
Lilford, Lord, *v.* **Att.-Gen.** . 48, 88, 347, 451
Lill *v.* Lill 36
Lock *v.* Venables 9, 60, 445
Londesborough, Lord, *v.* **Somerville** 225, 287
London Chartered Bank of Australia *v.* Lempriere 360
Long *v.* Gardner 260
——— *v.* Short 446
——— *v.* Watkinson 449
Longden *v.* Simson 12
Lord *v.* **Colvin** 97, 263
Lord-Adv. *v.* **Ailsa, Marquis of** . . 147
——————— *v.* **Bogie** 449
——————— *v.* **Buccleuch, Duke of** . 28, 447
——————— *v.* Drummond 158

PAGE

Lord-Adv. *v.* **Dunlop's Trustees** . . 108
——————— *v.* **Fife, Earl of** 427
——————— *v.* Gibson 172
——————— *v.* **Gordon** 90, 158
——————— *v.* **Hagart's Executors** . 143, 145
——————— *v.* Hamilton 237
——————— *v.* **Macdonald** 70
——————— *v.* **Macfarlane and others** 109, 354
——————— *v.* Marshall 75
——————— *v.* **McKersies** 418
——————— *v.* **Meiklam** 104, 328
——————— *v.* **Robert's Trustees** . . 313
——————— *v.* Robertson 357
——————— *v.* Sidgwick 119
——————— *v.* Stevenson 236
——————— *v.* **Taylor** 2, 226
——————— *v.* Wilson 482
——————— *v.* Zetland 158
Louch *v.* Peters 224
Lovegrove, In the Goods of . . . 272
Lovejoy *v.* Carter 80
Lovelace, Re 170, 353, 366
Lucas *v.* Jones 317
——— *v.* Lucas 231
Luckcraft *v.* Pridham 117, 310
Luxford *v.* Cheek 471
Lyall *v.* **Lyall** 171, 172

M.

Macaulay *v.* Phillips 409
Mackie *v.* Herbertson 481
Mackinley *v.* Bates 164, 412
Maclaren *v.* Stainton 445, 493
Maclean's Trusts 128, 356
Macoubrey *v.* Jones 493
Macrae *v.* **Lord-Adv.** 91
Macreight, Re 168
Magdalen College *v.* Att.-Gen. . . 77
Manchester and Southport Railway Co., Re 91
Mander *v.* Harris 31, 303, 453
Mann *v.* Copland 35
Manning *v.* Purcell 445
Mansfield *v.* Dugard 470
March *v.* Att.-Gen. 317
Marcus *v.* Marcus 488
Margaia, *in bonis* 194
Marlborough, Re 303
——————— (Duke of) *v.* Godolphin (Lord) 278
Marsh, Re 245
Marshall *v.* Crutwell 266

PAGE

Marshall's Executors *v.* **Lord-Adv.** 119, 143
Martin's Trustees *v.* Martin and others 172
Massey *v.* Lloyd 357
Matson *v.* Swift 300
Matthews *v.* Paul 493
Maugham *v.* Mason 112
Maundy *v.* Maundy 235
Maxton, In re 208
May *v.* Thomson 234
Maybery *v.* Brooking 136
McCormick *v.* Grogan 365
McFadden *v.* Jenkins 330
McMahon *v.* Burchell 409
McMyn, Re 227
McNicol *v.* McDougal 173
Mead *v.* Mead 232
——, Re. 173
Meek *v.* Devenish 402
Meredith *v.* Treffrey 176
Meyrick, Re 46
Micklethwaite, In re 148, 410
Middleton, Re 117
Midgley *v.* Midgley 448
Mildmay *v.* Quicke 111
Miles *v.* Harford 94
Millard *v.* Bailey 446
Miller *v.* Huddlestone 1
——— *v.* Miller 53, 173
Milne *v.* Gilbart 155, 323
Milroy *v.* Milroy 308
Milsom *v.* Awdry 10
Miner *v.* Baldwin 35
Miskelly's Case 272
Mitchell's Trusts, Re 120
Mitchell *v.* Smith 173
Moffat *v.* **Burnie** 36
Mogg *v.* Mogg 81
Moir's Trustees *v.* **Lord-Adv.** . . . 143
Montague *v.* Sandwich, Earl of . . 314
Monypenny *v.* Dering 129
Moore *v.* Darnton 173
——— *v.* Dixon 117
——— *v.* Frowd 197, 442
——— *v.* Moore 82, 173
Mordaunt *v.* Bedwell 105
Morgan *v.* Abergavenny 152
——— *v.* Schuyler 234
Morris *v.* Griffiths 101, 103
——— *v.* Livie 225
Moses *v.* **Crafter** 174
Moss *v.* Dunlop 323
Muggleton *v.* Barnett 114
Mules *v.* **Jennings** 72, 102, 103
Mullins *v.* Smith 152, 286
Mussoorie Bank *v.* Rayner 365

N.

PAGE

Nash *v.* Nash 409
Nathan's Case 144, 409
Nelson *v.* Page 299
Newbold, *in bonis* 484
Newman *v.* Bateson. 308
Newstead *v.* Searles 481, 483
Nicholson *v.* Drury Buildings Estate Co. 409
——— *v.* Tuttin 196
Nicholson's Estate, Re 1
Nisbett's Trustees *v.* **Learmonth** 9, 259, 342, 388
Noel *v.* **Henley** 2, 224
Northey *v.* Paxton 176
Noys *v.* Mordaunt 177
Nutt, Re 65

O.

O'Connor *v.* Haslam 137
Oglander *v.* Baston 409
Oldfield *v.* **Preston** 356, 464
Oldham *v.* Hughes 304
Oliphant *v.* Gerard 120
Oliver *v.* Brickland 119
O'Mahoney *v.* Burdett 233
Orford, Re 46
Orrell *v.* Orrell 178
Ostell's Case 143

P.

Page *v.* Leapingwell . . . 2, 317, 446
Paine's Case 127
Palin *v.* Hill 415
Palmer, Re 289, 410
——— *v.* Crawford 35
——— *v.* Graves 136
Paris *v.* Paris 9, 60
Parker, Re 75, 278, 330
——— *v.* Hodgson 357, 471
——— *v.* Lechmere 232, 409
Parkin, Re 120
Partington *v.* **Att.-Gen.** . 9, 94, 164, 258, 348
Pattenden *v.* Hobson 238
Pearce *v.* Graham 120
Pearse *v.* **Pearse** 252, 296
Pearson, Re 55
Pedder's Settlement, Re 402
Pembroke *v.* Friend 299
Penny *v.* Penny 116, 328
Percival's Executors *v.* **the Queen** 137, 144, 311, 408

PAGE

Perry's Executors *v.* the Queen 279, 286, 290, 381, 409
Perry *v.* Tuomey 306
Peter *v.* Stirling 116
Pettyt *v.* Jameson 335
Peyton, In re . . 71, 148, 251, 316, 322
Philbrick's Trusts 197, 341
Phillips *v.* Cayley 360
——— *v.* Evans 323
——— *v.* Phillips 112
Pickard, Re 134
Pickering *v.* Pickering 482
——— *v.* Stamford 278
Pickersgill *v.* Rodger 178
Piercy, Re 249
Pigott *v.* Pigott 273, 381
Pike *v.* Fitzgibbon 306
Pitt *v.* Pitt 227
Platt *v.* Routh 360, 362
Plunket *v.* Reilly 53
Pollard's Estate, Re 271
Pollock *v.* Pollock 44
Pooley, Re 285, 287
Portal and Lamb, Re 132
Porter, *in bonis* 98
——, Re 360
Porter's Trusts, Re 277
Potts, John 417
Powell's Trust 314
Powell *v.* Morgan 307
Powers, Re 293
Pratt *v.* Jackson 245
Price, Re 116, 305
——— *v.* Gibson 307
Pride, Re 307
Pridie *v.* Field 225
Prole *v.* Soady 81, 409
Pulteney *v.* Darlington 402
Purdew *v.* Jackson 81, 410

Q.

Quaedes' Trusts, Re. . . . 121, 177, 402

R.

Radnor, Earl of, Re 237
Raine, *in bonis* 272
Rammell *v.* Gillow 233
Ramsay's Settlement, Re 371
Randell, Re 77
Randfield *v.* Randfield 488
Reay *v.* Rawlins. 80

PAGE

Rebbeck, Re 428
Rees *v.* Keith 409
Reg. *v.* Commissioners of Stamps and Taxes—
Nathan's Case 144
Ostell's Case 143
Stracey's Case 90
Webster's Case 144
—— *v.* Brighton 248
—— *v.* Norreys 53
—— *v.* St. Giles 248
Reid, *in bonis* 486
Reynolds, Re 314
——— *v.* Godlee 111
——— *v.* Whelan 95
——— *v.* Wright. 53
Rich *v.* Cockell 232
Rickard *v.* Robson 314, 330
Ring *v.* Jarman 11
Ripley *v.* Moysey 117
——— *v.* Waterworth 53, 444
Roberts, Mary A., *in bonis* 275
——— *v.* Walker 309
Robinson *v.* Ashton 332
——— *v.* Governors of London Hospital 110
——— *v.* Ommanney. 120
——— *v.* Robinson 401
——— *v.* Wheelright 91
Rogers *v.* Jones 179
Rolls *v.* Pearce 173
Roose *v.* Chalk 488
Roper *v.* Roper 426
Rose *v.* Rogers 13
Ross's Trust, Re 65
Ross *v.* Borer 37
Routledge *v.* Dorril 365
Rowland *v.* Morgan. 237
Russell, Re 64
——— *v.* Dickson 126
Ryde, *in bonis* 415

S.

Sackville *v.* Smyth 44
Salt *v.* Chattaway 112, 309
——, Re 51
Saltoun, Lord, *v.* Adv.-Gen. . . . 158
Sammon, In re 15, 197, 341
Sanders *v.* Kiddell 225
Saunders, Re 226
Saunderson *v.* Bayley 117
Sayre *v.* Hughes 266

PAGE

Scales *v.* Heyhoe 111
Scarsdale (Lord) *v.* Curzon . . . 237
Scott, Re 254, 360
—— *v.* Izon 64
Scrutton *v.* Pattillo 409
Scudamore *v.* Scudamore 107
Seeley *v.* Jago 401
Shaftesbury, Earl of, *v.* Duke of Marlborough 225
Sharman, *in bonis* 488
Sharpe *v.* St. Sauveur 402
Shaw, Re 45
Shepheard *v.* Beetham 317
Sheppard, Re 53
Sherrington *v.* Yates 409
Shirley *v.* **Earl of Ferrers** 28, 282, 285, 412
Shuttleworth *v.* Greaves 177
Sibley *v.* Cook 278
Sibthorp *v.* Moxom 136
Simmons *v.* Pitt 73
——— *v.* Rudall 421
Sinclair, Re 1
Singleton *v.* Tomlinson 100
Sissons *v.* Giles 401, 403
Sitwell, Ex parte 4
Skottowe *v.* Young 247
Skrymsher *v.* Northcote 421
Sleech *v.* Thorington . . 152, 286, 446
Slevin, Re 77
Smale *v.* Graves 234
Smart, Re 152
Smith, Re 123
—— *v.* Anderson 224
—— *v.* Casen 174
—— *v.* Claxton 110
—— *v.* Everett 234
—— *v.* Smith 332
Smith's Trusts, In re 171
Smyth, Re 213
Snellgrove *v.* Bailey 173
Snow *v.* Boycott 307
Soames *v.* Martin 36
Soar *v.* Foster 263
Sol.-Gen. *v.* **Law Reversionary Interest Society** 25, 59, 344, 388, 423
South *v.* Williams 136
Southampton, Lord, *v.* Hertford, Marquis of 137
Sparrow *v.* Josselyn 446
Spinks *v.* Robins 14
Spurway *v.* Glynn 260
Stafford *v.* Buckley, Earl of . . . 35
Standing *v.* Bowring 232
Stead *v.* Platt 128
Stephens, Re 55

PAGE

Stern *v.* **Regina** 26
Steuart *v.* Gladstone 335
Stevens *v.* Trevor-Garrick 121
Stocken *v.* Dawson 196
Stocker *v* Harbin 309
Stocks *v.* Barré 314
——— *v.* Dodsley 449
Stokes *v.* **Ducroz** 336
——— *v.* Heron 36
——— *v.* Stokes 486
———, Re 51
Stonor's Trusts, Re 121
Storer *v.* Prestage 30
Storrs *v.* Benbow 81
Stow *v.* **Davenport** . . . 224, 225, 284
Stracey, *in bonis* 272
Stracey's Case 424
Straus *v.* Goldsmid 263
Strickland *v.* Strickland 237
Stringer *v.* Harper 116
Strode *v.* Russell 473
Suisse *v.* Lowther 13, 126
Surman *v.* Wharton 304
Sutton *v.* Sutton 273, 293
Swabey *v.* Swabey 135, 307
Swaine *v.* Burton 269
Sweetapple *v.* Bindon . . 107, 128, 199
Sweeting *v.* **Sweeting** . . . 91, 290, 360
Swinburne *v.* Swinburne 357
Syer *v.* Gladstone 179, 326
Symonds *v.* The Marine Society . . 317

T.

Taber, Re 37
Talbot *v.* **Cody** 232
——— *v.* **Staniforth** 97
Tasker *v.* Tasker 329
Tate *v.* Hilbert 79, 173
—— *v.* Leithead 174
Taylor *v.* Lambert 471
——— *v.* Taylor 110, 112
——— *v.* ——— 244
Taylor's Estate, Re 144
Tench *v.* Cheese 309
Tharp, *in bonis* 272
Thellusson *v.* Woodford 94
Thetford School Case 77
Thomas *v.* Britnell 136
——— *v.* **Howell** 284, 317
——— *v.* **Montgomery** . 9, 164, 259, 342
———, Re 484
Thompson *v.* **Birch** 171
Thomson *v.* **Adv.-Gen.** . . . 51, 170, 353
Thorley *v.* Massam . . . 285, 287, 442

PAGE

Thornber *v.* Wilson 317
Thornborough *v.* Baker . . . 101, 315
Thornley *v.* Thornley 165
Thornton *v.* Hawley 104
Thorpe *v.* Owen 238, 301
Thorpe *v.* Bestwick 488
Thynne *v.* Glengall 428
——— *v.* St. Maur 11
Todd *v.* Bielby 1
Tootal's Trusts, In re 169
Townley *v.* Bedwell. 101
Townsend's Estate, Re 5
Townsend *v.* Martin 446
——— *v.* Windham 47
Townson *v.* Harrison 36
Trafford *v.* Boehm 402
——— *v.* Trafford 237
Travers *v.* Travers 120
Travis *v.* Milne 63
Tredwell, Re 471
Treport's Case 306
Trestrail *v.* Mason 44
Trethewy *v.* Helyar. 450
Trevor *v.* Trevor 199, 307
Trimmer *v.* Danby 173
Tucker *v.* Barron 263
——— *v.* Tucker 47
Tugwell, Re 105
Tuite *v.* Birmingham 176
Turnbull *v.* Forman 306
Turner *v.* Martin 284, 448
——— *v.* Turner 228
Twigg *v.* Brown 483
Tyler *v.* Lake 307

U.

Udney *v.* Udney. 167
Underhill *v.* Roden 471
Underwood *v.* Wing 132
Upton *v.* Brown 64
Urruela, In re, Goods of . . . 20, 382

V.

Vaisey *v.* Reynolds 123
Vardon's Trusts, Re 177
Varlo *v.* Faden 137
Vaucher *v.* Solicitor to the Treasury . 248
Vaughan, Re 12
Vaux *v.* Henderson 323
Veal *v.* Veal 173
Venables *v.* Baring 297

PAGE

Vez *v.* Emery 195
Vickers *v.* Pound 137
Vincent *v.* Vincent 330
Vine *v.* Raleigh 12
Viner *v.* Francis 80
Von Buseck, *in bonis* 4, 486

W.

Wade *v.* Jenkins 335
Wainwright 132
Walker *v.* Milne 134
——— *v.* Shore 81
——— *v.* Symonds 196
Wall *v.* Tomlinson 409
Wallace *v.* Att.-Gen. 170
——— *v.* Greenwood 111
Wallop's Trusts, Re . . . 171, 353, 368
Walrond *v.* Rosslyn. 402
Walter *v.* Maunde 102
——— *v.* Hodge 172
Walton *v.* Butler 332
Warbrick *v.* Varley 2, 224
Ward *v.* Turner 172, 173
——— *v.* Ward 303, 461
Warden *v.* Jones. 409
Warner's Estate 85, 345, 348
Warren *v.* Rudall 179
Warrington *v.* Warrington. . . . 454
Wassell *v.* Leggatt 260
Waterer *v.* Waterer . . . 112, 269, 336
Watson *v.* Arundell 100
——— *v.* Watson 13
Watts *v.* Watts 105
Wauchope *v.* Wauchope 169
Webber, Re 74, 437
Webster's Case 144
Wedderburn *v.* Wedderburn . . . 234
Weeding *v.* Weeding 100
Weir *v.* **Lord-Adv.** 102
Wenham, In re 195, 448
Wenmoth, Re 80
West of England Bank, Re . . . 64
West *v.* Shuttleworth 306
Wheldale *v.* Partridge 99, 111
Whistler *v.* Webster. 178
Whitaker, Re 121, 135
Whitby *v.* Mitchell 192
White, Re 442
——— *v.* Lake 225
——— *v.* White 73, 178
Whitehead, Re 232
Whittaker *v.* Kershaw 64, 137
——— *v.* Whittaker 30

PAGE

Whorwood, Re 277
Wigan *v.* Rowland 488
Wilcox *v.* **Smith** 57
Wilday *v.* Barnett 136
Wildbore *v.* Gregory 228
Wildman *v.* Wildman 409
Wild's Case 426
Wilkes *v.* Collin 307
Wilkins, Re 3
——— *v.* Jodrell 36
Wilkinson *v.* Barber . . . 76, 224, 225
——— *v.* Dent 178
——— *v.* Duncan . . 112, 425, 462
——— *v.* Wilkinson 287
Williams, Re 228
——— *v.* Hughes 225
——— *v.* Mitchell 360
——— *v.* Nixon 82
——— *v.* Williams 116
Williamson *v.* **Adv.-Gen.** 101
——— *v.* **Naylor** 284, 448
Wilson *v.* Coxwell 422
——— *v.* Eden 228
——— *v.* Morley 137
——— *v.* **O'Leary** 2
——— *v.* Williams 234
Windham *v.* Graham 357
Winter *v.* Winter 231
Wintle, Re 253, 287

PAGE

Wishart's Executors *v.* **Lord-Adv.** 64, 143, 343, 469
Wolverton *v.* **Att.-Gen.** 488
Wood *v.* Scoles 335
———, Re. 182
Woodward *v.* Woodward 232
Wolmershausen *v.* Gallick 98
Wright *v.* **Barnewall** . . 292, 342, 388
——— *v.* Callender 35
——— *v.* Rose 99, 102, 314
——— *v.* Tuckett 164, 412
——— *v.* Wright 110
Wroughton *v.* Colquhoun 1, 35
Wyckoff's Case 297
Wylie *v.* Moffat 305
Wyman *v.* Carter 472

Y.

Yates *v.* Compton 35
——— *v.* **Finn** 9
Yockney *v.* Hansard 126

Z.

Zetland, Earl of, *v.* **Lord-Adv.** . . . 158

INDEX OF TITLES.

A.

PAGE

Abatement 1
Abolition 3
Abroad 4
Absence beyond the seas 5
Acceleration of succession 5
Account 6
Account Stamp Duty 6
Accretions 8
Accruer 10
Accumulations 10
Additional Succession Duty . . . 12
Ademption 13
Adhesive stamps 14
Administration Bond 14
Administration Duty 15
Administration, Letters of 15
Administration suit 15
Administrator 16
Advance, payment in 17
Advancement and advances . . . 18
Advowson 19
Affidavit 20
Affirmation 21
After-acquired property 21
Age 21
Agent and agent's charges . . . 21
Aggregation 21
Agricultural property 24
Alien 25
Alienee and alienation 25
Allot, power to 26
Allowances. See "**Deductions.**"
Ambassador 26
American railway shares 26
Amount, on which duty payable. See "Payment."
Ancestors 27
Ancestral mortgage 27
Animal, gift to or in trust for . . . 27
Annual value of "succession" . . 27

PAGE

Annuity 29
Appeal 37
Appointment. See "**Powers of appointment.**"
Apportionment 43
Appraisement. See "**Valuation.**"
Army prize money 46
Arrears 46
Assent 47
Assessment 47
Assets 50
Assignment 52
Assimilation 52
Attesting witnesses. See "Witnesses."
Aunt 52
Autre vie, estate *pur* 53

B.

Bahamas, Death Duties in 54
Bailiff 54
Bank Note 54
Bank of England Provident Society . 54
Bank shares, calls on. See "Calls."
Bankruptcy 54
Barbados, Death Duty payable in . 55
Bare trustee 56
Base fee 56
Bastard 56
Beech Case 56
Beneficial lease 57
Beneficially entitled 57
Benefit 58
Bermudas, no Death Duty in . . . 58
Bill of exchange 58
Body Corporate, gifts to 58
Bona notabilia 59
Bona vacantia 59
Bond 59
Bond debt 59
Bonds 59

PAGE

Bond stamp 60
Bonus 60
Book debts 60
Books 60
Borough English 60
British Columbia, Death Duty in . . 60
British Guiana, Death Duties in . . 61
British India, Death Duty in, etc. . 61
British possessions 62
Brother 63
Building lease 63
Buildings and building land . . . 63
Building Society 63
Business 63

C.

Calculations 64
Calls 64
Campbell's Act (Lord) 64
Canal shares. See "**Real property.**"
Cape of Good Hope, Death Duty in . 65
Capita, per 65
Caveat 65
Certificate of further security . . . 66
Certificates as to the payment of duty 66
Cesser of determinable charges . . 70
Ceylon, Death Duty in 72
Chancery, Court of 72
Channel Islands 72
Charge of debts. See "**Debts.**"
Charges on real estate 73
Charge of duty on property . . . 73
Charities, gifts to 75
Chattels 78
Cheque 79
Children, gifts to 79
Choses in action 81
Church, gifts to, and Church patronage 82
Civil pay and pension 82
Class, bequest to a. See "Children."
Co-executors 82
Collaterals 83
Collection of Estate Duty 83
Colonial bonds 83
Colonial Probate Act, 1892. See "Resealing."
Colonies. See "British possessions."
Commencement of Act. See "Dates."
Commissioners of Inland Revenue . . 84
Committee of Lunatic 85
Commorientes. See "Death."
Commutation 85
Company 86
Competent to dispose 87

PAGE

Composite settlement. See "Settlement."
Composition of Death Duties . . . 88
Compromise 90
Compulsory sale 91
Conditional legacy 92
Confirmation 92
Consanguinity. See "Rates of duty."
Consideration 93
Construction 93
Constructive trusts 96
Contingency, gifts subject to . . . 96
Contingent incumbrance 97
Contingent interest in expectancy . 97
Contingent settlement 98
Contingent will 98
Continuing interest. See "**Competent to dispose.**"
Contribution 98
Conversion 98
Co-parcenary 113
Copyholds 113
Copyright 115
Corporate Body 116
Corporation duty 116
Corporeal hereditament 116
Corpse 116
Corrective affidavit. See "Rectification of duty."
Costs 116
County Council 117
Cousin 117
Covenant 118
Cowley Case 121
Credit 122
Creditor 122
Crops 122
Cross-remainders 123
Crown 123
Crown debts 123
Crown entails 124
Cum onere. See "Ancestral mortgage"
Cumulative duties 124
Cumulative legacies 126
Curator, liability of 127
Curtesy 127
Customs, Annuity, and Benevolent Fund 128
Customs and Inland Revenue Acts, 1880, 1881, 1888, 1889 (Appendix).
Cy près, doctrine of 129

D.

Dates 129
Daughter 131

PAGE

Daughter-in-law 131
Death 131
Death Duties 132
Debentures 134
De bonis grants 134
Debts 134
Deceased person 137
Deceased wife's sister 138
Declaration of trust 138
Deductions 138
Deed 151
Deer in a park 152
Demonstrative legacy 152
Denoting stamp. See "**Freemark.**"
Deposit of title deeds. See "Deed."
Descent 152
Descent of personal estate 153
Descent of real estate 155
Determinable charges, cesser of. See "Cesser."
Devise 157
Devolution 158
Different persons in succession, gifts to 159
Dilapidations 161
Direction 161
Discharge of executor. See "Certificate."
Disclaimer 161
Discount 162
Discretionary power to sell. See "Conversion."
Disentailing deed 162
Disposition 162
Distinct legacies. 163
Distribution, Statutes of 164
Dividends 164
Divorce 164
Documents 165
Dodington Case 166
Domicile 166
Donatio mortis causâ 172
Double devolution. See "**Cumulative duties.**"
Double duty 174
Double Probate 174
Doubtful debt 175
Dower 175
Drainage charge 176
Duty free gift. See "**Free of duty.**"
Duty paid stamp. See "**Freemark.**"

E.

Effects 176
Eldest son 176

PAGE

Election 177
Embalming 180
Emblements 180
Employers' Liability Act 180
Enfranchisement 180
Engravings 180
Enlargement of interest 180
Entireties, tenancy by. See "Tenancy by entireties."
Entail. See "Estate tail."
Equitable mortgage 181
Equity of redemption 181
Escheat 182
Escrow. See "Deed."
Estate by itself 182
Estate Duty 184
Estate for life 190
Estate in fee simple 190
Estate tail 191
Evasion of duty. 193
Evidence 193
Examples 193
Excessive appointments. See "Powers of appointment."
Exchange, power to 193
Executor and administrator . . . 194
Executory interests 199
Executory trusts 199
Exemptions 199
Exoneration 207
Expectancy, estates in 207
Expenses 208
Extinction of determinable charges . 208

F.

Falkland Islands, Death Duty in . 208
Falling in of lease. See "Leaseholds."
Family 208
Father 208
Felon 209
Fiji, Death Duty in 209
Finance Acts, 1894, 1896, 1898 (Appendix).
Fines 209
Fixed duties 211
Foreign domicile. See "Domicile."
Foreigner and foreign property . . 212
Forgiveness of debt 214
Forms in use 215
Fractions (£10, £100) 218
Freebench 219
Freemark 220
Free of duty, gifts 223
Friendly Societies 226

PAGE

Fund in Court 226
Funeral expenses 226
Furniture 227
Further security. See "Certificate."

G.

Gambia 227
Gavelkind 227
General bequest 228
General devise 228
General direction to pay debts. See "Debts."
General legacy 229
General power of appointment. See "Powers of appointment."
Gifts, inter vivos 229
Gifts over 233
Gold Coast 233
Goodwill 233
Grandfather 234
Grandmother 234
Grant, time of issuing 234
Grassum 234
Great-aunt 234
Great-uncle 234
Greenwich Hospital, gift to . . . 235
Ground rent 235
Growing crops. See "Crops."
Guardian 235

H.

Half-blood 235
Haygarth Case 235
Heir-at-law 236
Heir of entail 236
Heirlooms 237
Heirs 238
Heirs of the body 238
Hereditaments 238
Heriot 238
Heritable bonds 239
History of the Death Duties . . . 239
Holograph 244
Hong Kong, Death Duties in . . . 244
Hotchpot 244
Household effects 245
Household goods 245
Husband and wife 245

I.

Illegitimacy 246
Immovables 248

PAGE

Improvements 249
Improved leasehold ground rent . . 250
Income 250
Income Tax, and Income Tax Acts . 250
Increase of benefit 251
Incumbrances 251
India 252
Infant 253
Informer 254
Inland Revenue affidavit 254
Instalments 255
Interest 258
Interest in expectancy 260

J.

Jews 263
Joint disposition. See "Joint predecessor."
Joint grants 263
Joint investment 263
Joint predecessor 267
Jointure rent-charge 267
Joint tenancy 269
Joint wills 272
Jurisdiction 272

L.

Labuan, Death Duty in 272
Lagos, no Death Duty in 273
Land Tax 273
Land Transfer Act, 1897 273
Lapse 277
Leaseholds 279
Leeward Islands, Death Duties in . 282
Legacy and Legacy Duty 282
Legitim 292
Liability. See "Payment."
Lien 292
Life policy. See "Policy."
Lighthouse tolls 292
Limitations 293
Lineals 294
Littledale Case 294
Local Taxation grant 295
Locality 296
Locke King's Act 299
Lunatic 300

M.

Maintenance 301
Manitoba, Death Duty in 301
Manor 301

PAGE

Mansion House 302
Marriage consideration 302
Married persons 302
Married Woman's Property . . . 302
Masses 306
Merger 306
Mines 308
Minors and minority 308
Misappropriation of duty 308
Mistake. See "**Rectification of duty.**"
Mixed funds 308
Modus 313
Money 313
Money, or money's worth. See "Consideration."
Monument 314
Mortgage 314
Mortis causâ, gifts. See "**Donatio mortis causâ.**"
Mortmain 317
Mother 318
Mother-in-law 318
Mourning 318
Mutual wills. See "Joint wills."

N.

Natal, no Death Duty in 318
Nation, gifts to 318
National interest, objects of . . . 318
Navy pay 319
Necessary outgoings 319
Nephew and niece 319
New Brunswick, Death Duty in . . 320
Newfoundland, Death Duty in . . 320
New River 320
New South Wales, Death Duty in . 320
New succession 321
New Zealand, Death Duty in . . . 323
Next-of-kin 323
Next presentation 323
Nomination policies. See "Policy."
Notation of domicile 323
Notice 324
Nova Scotia, Death Duty in . . . 324
Nuncupative wills 325

O.

Oaths 326
Occupation 326
Occupation rent 326
Office 326
Official forms. See "Forms in use."

PAGE

Onerous bequest 326
Ontario, Death Duty in 327
Open market 327
Option 328
Order of payment of debts 328
Order of the Court 328
Orders in Council 329
Ornamental timber 329
Outgoings. See "Necessary outgoings."
Overpaid duty. See "Rectification of duty."

P.

Paraphernalia 329
Parent 329
Parish and parish church 329
Parol trusts 330
Partnership 331
Pawn 337
PAYMENT 337
(*a*) Estate Duty—
when payable,
by whom,
on what amount,
(*b*) Legacy duty—
when payable,
by whom,
on what amount,
(*c*) Succession Duty—
when payable,
by whom,
on what amount,
(*d*) Probate Duty—
when and by whom payable,
on what amount,
(*e*) Account Stamp Duty—
when and by whom payable,
on what amount,
(*f*) Temporary Estate Duty.
Payment into Court 349
Payment out of Court 349
Pecuniary legacy 350
Penalties 350
Pension 352
Perjury 352
Perpetuities. See "Rule against perpetuities."
Person 352
"**Personal estate**" 352
Personal property 353
Pin money 354
Plate, etc., gift of 354
Policy moneys 355

PAGE

Portions 357
Post-nuptial settlement 359
Post-obit bonds 359
Powers of appointment 359
Power to allot, etc. See "Conversion."
Power to exchange. See "Exchange."
Precatory trusts 365
PREDECESSOR 365
Prince Edward's Island, Death Duty in 372
Priority 372
Private Act of Parliament 373
Probate 373
Probate Duty 377
Proceedings 382
Proceeds of real estate 383
Promissory note 383
"Property" 383
"Property passing" 384
Property tax 386
Public house 386
Pur autre vie, estate 388
Purchase and purchaser 388

Q.

Quebec, Death Duty in 391
Queensland, Death Duty in . . . 392

R.

Railway Company 393
Rates 393
Rates of duty 394
Real property 397
Receipt 400
Reconversion 401
Rectification of duty 403
Redemption of Land Tax. See "Land Tax."
Reduction into possession 409
Reference, gift by 410
Registrars 410
Reimbursement 410
Relations 410
Relationship 410
Release of debt 410
Release of life interest. See "Acceleration"
Relinquished property 410
Remainderman 412
Renewal of leaseholds 412
Rent 412
Rent-charge 413
Rente 414

PAGE

Rents 414
Repairs 414
Repayment of duty. See "Rectification of duty."
Representation 414
Representatives 415
Resealing 415
Reservation of interest 418
Resettlements 419
Residuary account 420
Residuary bequest 420
Residuary devise 420
Residue, gift of 421
Retainer 422
Return of duty. See "Rectification of duty."
Reversionary interests, alienation of . 423
Reverter to Settlor. See "Interests in Expectancy."
Revocation of grant 424
Revocation of will 425
Royal Family 425
Rule against perpetuities 425
Rule in Shelley's Case 425
Rule in Wild's Case 426

S.

Sailors and soldiers 426
Sale 426
Satisfaction 428
Savings Bank 429
Scales of duty 430
Scotch patents 433
Scotland 433
Secret trust 434
Security 434
Separate assessment 434
Separate Legacies. See "Cumulative Legacies."
Settled Land Act, 1882 434
Settlement 435
Settlement Estate Duty 436
Shares. See "**Stocks and shares.**"
Shelley's Case. See "Rule in Shelley's Case."
Ships 439
Sierra Leone, Death Duty in . . . 440
Sister 440
Situs. See "Locality."
Small estates 440
Solicitor 441
Son 442
Son-in-law. See "Lineals."
South Australia, Death Duty in . . 442

PAGE

Special Occupant 443
Specialty debt 444
Specific articles 444
Specific legacy 444
Sporting rights 447
Stamp 447
Statistics 447
Statute-barred debt 447
Stocks and shares 448
Straits Settlements, Death Duty in . 449
Stranger in blood 449
Subscription. See "Voluntary Subscription."
Substituted legatee 449
Substitutional gifts. See "Cumulative legacies."
Succession Duty 450
Successions 451
Suits. See "Administration Suit."
Superstitious Uses 458
Sureties 458
Surrender of Life Interest. See "Acceleration;" "Beech Case."
Survivorship 458

T.

Tasmania, Death Duty in 458
Temporary Estate Duty 458
Tenancy by entireties 461
Tenant by the Curtesy. See "Curtesy."
Tenant-for-life 462
Tenant-in-tail 462
Tenant-right 462
Testamentary expenses 462
Timber 463
Time when duty payable. See "Payment."
Tithes and tithe rent-charge . . . 463
Tolls 464
Tomb 464
Tontine 464
Transferred interests 464
Transitu 464
Transmitted successors 464
Trinidad and Tobago, Death Duty in . 465
Trust property 465
Trustee 465
Tutor 466

U.

PAGE

Under £20 466
Under £100 466
Under £300 468
Under £500 468
Under £1000 468
Undisposed of 468
Unpaid instalments 468
Use and occupation 468

V.

Valuation 468
Value for duty. See "Payment."
Vesting 470
Victoria, Death Duty in 472
Void administration. See "Revocation of Grant."
Void for uncertainty 473
Voluntary Conveyance Act, 1893 . . 474
Voluntary debt 474
Voluntary disposition 474
Voluntary settlement 475
Voluntary subscription 482
Voluntary transfer into joint names. See "Joint investment."

W.

Wasting property 482
Western Australia, Death Duty in . 482
When duty payable. See "Payment."
Widow 483
Widower 484
Wife 484
Wild's Case. See "Rule in Wild's Case."
Will 485
Wills Act 486
Witness to a will, gifts to 487
Wolverton Case 488
Wood Case 492

Y.

Younger sons 493

ADDENDA ET CORRIGENDA.

Page 21. "Age."

When only the year of birth of successor or annuitant can be given, the birth is considered in practice to have occurred before or after July 1, according as the death was subsequent or prior to that date.

Page 24, *line* 15.—"The jointure . . . pays the rate of Estate Duty attributable thereto." The jointure, however, where reserved in favour of a member of the "family" of the deceased is to be aggregated with other aggregable property passing on deceased's death. And where property is limited to A. for life (died after Aug. 1, 1894), remainder to B. (a member of the "family" of A.), who, prior to A.'s death, resettled so that the property actually passed on A.'s death out of the "family" of A., the property in practice has been treated as not aggregable.

Annuity. II. Estate Duty, p. 34.

[**Property and annuity not aggregable,** *inter se.*]

(I.) Property, already charged with an existing *terminable* annuity, passes on the death of A. after the Finance Act, 1894 :—

Case 1. Annuity given to B. for life *simpliciter.*

Case 2. Annuity to cease on marriage of B., or on attainment by B. of a given age, or on expiration of a term of years.

In Case 1. Estate Duty is payable on the death of B. on the slice or section of the property notionally locked up to provide for the annuity.

In Case 2. Estate Duty is payable on death of A. (but after an interval) on such slice or section.

The Account, however, can generally be closed by deducting the value of the annuity or terminable charge from the principal value of the property, or by way of composition under s. 39 of the Succession Duty Act, 1853, as the case may require. Compare analogous case of deduction of value of annuity (charged on deceased's free personalty) in the Residuary Account (p. 29 (5)).

The rate of Estate Duty on the property passing is determined by its principal value after deducting the value of all terminable incumbrances. This rate will be the rate to be paid on the sum "locked up" in Case 1 or Case 2, when such sum becomes chargeable with duty.

Where the annuity is *perpetual*, to find the Estate Duty payable on the property passing, proceed thus—

Ascertain the net annual value, after deducting the fee farm rent or perpetual head rent, or tithe rent-charge, or redeemed Land Tax, or other perpetual annuity, and Estate Duty is payable on such a number of years' purchase thereof, as may be considered to be the value in the open market of the property thus incumbered (ss. 2 (1*b*) ; 7 (7*b*), Finance Act, 1894). "Incumbrances" in s. 7 (1) is by s. 22 (1*k*) to be read as including "mortgages" and "*terminable* charges."

(II.) Where the annuity comes into being at the same time as on the same event by which the property passes, proceed thus :—

To ascertain rate :—

(*a*) Property passing. The rate is that appropriate to the principal value less value of annuity.

(*b*) Annuity. The rate is that appropriate to the value of the annuity.

The Account may be closed by payment of the appropriate rates on (1) the principal value of the property (less the value of the annuity), and on (2) the value of the annuity.

Or duty may be paid on (1) the principal value less the notional "slice" attributable to the annuity, (2) on the notional "slice" when the annuitant dies.

Page 57. **"Beech Case."**

Appeal to the House of Lords dismissed, Dec. 6, 1898. See *Times*, 7 Dec., 1898.

Page 164. **"Divorce."**

Gift to a son or daughter for life, remainder to any wife or husband of such son or daughter for life. Here a divorced wife or husband would apparently not take (*Bullmore* v. *Wynter*, 22 Ch. D. 619; *In re Morrieson*; *Hitchins* v. *Morrieson*, 40 Ch. D. 30).

Page 180. **Employers' Liability Act, 1880.**

Estate Duty is also not claimed on compensation payable under the Workmen's Compensation Act, 1897.

Page 189 (vi.) *line* 9.—*Delete* "not so, however . . . alienee."

(vi.) *line* 17.—*Delete* "then M. is liable . . . to N.," and substitute the following:—

M. is liable for the Estate Duty; but where after payment of mortgage there remains a surplus which is not sufficient to pay the Estate Duty in full, proceed thus—

i. Apply the surplus on payment of Estate Duty, the rate being that attributable to the gross value.

ii. Deduct the amount of capital attributable (at 3 per cent.) to the Estate Duty so charged.

iii. Charge the old duties on the balance.

Example.

Value of property £2037 (£2000 at 3 per cent. = £60)
Amount of mortgage £1995 (principal, interest and costs)

Surplus £42

i. The surplus available for Estate Duty is £42.

ii. Capital at 3 per cent. attributable to this is £1400.

iii. Succession Duty at 1½ per cent. falls to be paid on £2037 – £1400, or £637, by the last mortgagee.

Page 201 (11).—Any claim for remission of duty under s. 15 (2) should be accompanied by a detailed list of the articles bequeathed, and an estimate of value.

Page 208. **Family** (s. 4 (proviso)).

In practice "wife or husband," etc., is read as "surviving wife or husband," etc.

Page 262. **"Reverter to disponer."**

"And no other interest is created by the said disposition." This does not include a mere power to create an interest.

For example, a settlement by A. upon B. for life, remainder as A. shall by will appoint, and in default to A. absolutely. Here where A. survives B. the property is not "deemed to pass" on B.'s death.

Page 230, *footnote* (*a*).—Estate Duty on *inter vivos* gifts to charities made within twelve months of death not now claimed:

i. Where fixed annual subscriptions exceeding £20 each have been made for two or more years to the same object or objects.

ii. Where a fixed annual sum has been expended in donations for two or more years, but the object or objects have differed from year to year.

Where, however, a fluctuating annual sum has been expended in donations for two or more years, and the duty on the gifts is to be paid in one sum by the executors, Estate Duty is charged on the excess (if any) over the average amount so expended in the second, third, and fourth years preceding death.

For example, donations within 12 months of death equal £200

..	..	2 years	„	„	£200	Average £150.
„	„	3 years	„	„	£150	
„	„	4 years	„	„	£100	

Estate Duty is charged on £200 − £150, or £50.

Page 294. **Littledale Case.**

Where by the death of B. (tenant-for-life) after Aug. 1, 1894, Legacy Duty on foreign personalty at 1 per cent. under the will of A. is excused by the Estate Duty then payable, and Succession Duty is also payable on the same death on the same fund settled by the reversioner, the Legacy Duty so excused is to be taken into account in fixing the rate of Succession Duty to be paid under the settlement.

Page 309, *line* 3 *from the bottom.—Substitute* "personal estate" *for* "real estate."

Page 337.—*Attorney-General* v. *Brown*, C. A. (1897) 145. Decision of Court of Appeal confirmed by the House of Lords, Dec. 13, 1898.

Page 346. **"Successions in Personal Property."**

Where duty charged on the *corpus* the practice is now to take the value as at the date of the death, and interest at 3 per cent. from the death to the date of the account; duty being charged on dividends or other income since the death only where they form an accumulated fund in the hands of the trustee.

Page 355. **"Policy Moneys."**

The interest of a deceased person in an insurance policy not being an "interest in expectancy," Estate Duty would appear to be only payable on the surrender value at his death, notwithstanding the life has dropped in the interval between his death, and the application for the grant.

Page 422. **"Retainer."**

Executor's right of retainer. The settled rule that an executor who pays creditors without notice of the existence of a creditor of higher degree, is not liable to account for the sums so paid at the instance of that creditor applies to the retainer by an executor of a debt due to himself (*Blake* v. *Gale*, 34 W. R. 555 distinguished: in this case the executors retained their own shares of residue, and were legatees and not creditors, and assets paid to a legatee can be followed by a creditor); *In re Fludyer, Wingfield* v. *Erskine*, 2 Ch. (1898), 562.

Page 437.—S. 19 of Finance Act, 1896, is not retrospective.

Page 462.—"*Testamentary Expenses,*" *read* "(but not against Probate Duty or Estate Duty)."

DIGEST OF THE DEATH DUTIES.

A.

ABATEMENT.

1. If, after payment of debts, there is a deficiency of assets for payment of all the legacies, the legacies will abate in the following order:—

   Legacies out of Residue;

   General Legacies, including demonstrative legacies where the primary fund has ceased to exist;

   Specific Legacies.

2. Annuities rank with general legacies for the purpose of abatement (*Miller* v. *Huddlestone*, 1 Mac. & G. 513). They are valued according to the Government tables at the time of such abatement, the value, where the annuitant is dead, being the total payments which would have been made to him in respect of it (*Todd* v. *Bielby*, 27 B. 353).

   The same rule applies where the annuitant is living (*Heath* v. *Nugent*, 29 B. 226).

   A rent-charge, however, or annuity issuing out of the land, has priority over general legacies where an abatement is necessary (*Creed* v. *Creed*, 11 Cl. & F. 491; *in re Briggs*; *Briggs* v. *George*, 29 W. R. 925). Where a legacy to testator's widow in lieu of dower has priority, see "Widow."

3. Annuitants, or the representatives of any annuitant who has died, are, in the event of an abatement being necessary, entitled to the abated amounts of the value of their annuities (*Wroughton* v. *Colquhoun*, 1 De G. & S. 357); but this only applies where the estate is being administered by the Court (*in re Nicholson's Estate*, I. R. 11 Eq. 177).

   The rule does not, however, apply to annuities determinable on marriage or bankruptcy (*Carr* v. *Ingleby*, 1 De G. & S. 362; *Gratrix* v. *Chambers*, 2 Giff. 321); but see *Re Sinclair*, *infra*.

   A. covenanted by deed to pay an annuity of £80 to B. for life, or until he should do or suffer some act or thing whereby the annuity, or any part thereof, would, if belonging absolutely to him, become vested in some other person. There was no gift over. On A.'s death his estate was found insufficient to satisfy the annuity, valued at £1642, in full. A fund in court (£1327) represented the annuity.

   Held, that the fund must be paid to B. The Court declined to follow *Carr* v. *Ingleby*, *supra*, which makes an exception to the general rule where an annuity is given subject to condition (*Re Sinclair*; *Allen* v. *Sinclair*, 76 L. T. 452).

4. A., the donee of a power, having mistaken the amount of the fund (£1000) appoints £800 to B., and £400 to C. by the same instrument. B. and C. must abate rateably (*Laurie* v. *Clutton*, 15 B. 65).

ABATEMENT—*continued.*

A., the donee of a power, appoints by will £2000 to B., £2000 to C., and the rest—the fund being £6000—to D. It is read as an appointment of £2000 to D., so that in case of a deficiency B., C., and D. will abate rateably (*Page* v. *Leapingwell*, 18 Ves. 463; *Easum* v. *Appleford*, 5 M. & C. 56; *Elwes* v. *Causton*, 30 B. 554). See further Theobald on Wills, 4th ed.

5. **Legacy Duty.**

(*a*) A gift of legacy duty on a specific or pecuniary legacy is itself a pecuniary legacy, and must abate with the other pecuniary legacies (**Farrer** *v.* **St. Catherine's College, Cambridge**, L. R. 16 Eq. 19).

Example.

Legacy of £400 to A. (brother).

Legacy of £500 to B. (sister), duty free.

Legacy of £700 to C. (cousin), duty free.

The gifts to B. and C. must be regarded as gifts of £500, £700, and the duty thereon, viz. £15 and £35 (**Noel** *v.* **Henley**, 7 Pr. 253).

Net personalty is (say) £1000, after payment of debts, funeral, and testamentary expenses.

The legacies (with duty £15 and £35) total £1650.

Now 1000 : 1650 :: 20 : 33.

Therefore A., B., and C. take $\frac{20}{33}$ of £400, £515, and £735 respectively.

(*b*) Where all the legacies are given duty free and the legacies have to abate, the legatees must pay their own duty on the abated legacies, there being no other fund out of which to pay the duty (**Lord-Advocate** *v.* **Taylor and others** (Miller's Trustees), 21 Sco. L. R. 709).

So that in the above example, each legatee would take $\frac{1000}{1650}$ or $\frac{5}{8}$ of his legacy.

(*c*) A. bequeathed his residue in trust to sell and divide into two equal parts, one moiety he gave to B. "free from any charge or liability in respect thereof," the other moiety he gave to his nephews and nieces, without the additional words.

Held, that the legacy duty on B.'s moiety was payable out of any lapsed residue, and if none, out of the second moiety (**Warbrick** *v.* **Varley**, 30 B. 241).

(*d*) A. bequeathed certain legacies, free of Legacy Duty, *simpliciter*, and directed that the legacy duty on other legacies should be paid out of his residuary estate.

The corpus of the legacies and the duty having been paid, and it having been ascertained that the estate was deficient, it was held that the gift of duty out of the residuary estate failed *pro tanto*, and that the legatees whose legacy duty was to be borne by the residuary estate must themselves bear the legacy duty to the extent to which the general personal estate was insufficient to pay the same (**Wilson** *v.* **O'Leary**), L. R. 17 Eq. 419).

(*e*) A.'s estate was insufficient (after payment of debts) to pay in full annuities of £150 (to B. his widow) and of £100 to C., a stranger in blood. The latter annuity was directed to be paid free of legacy duty, which was to be paid out of A.'s estate.

It was held that the fund (after payment of costs) should be apportioned between the annuitants in the proportion which the sums composed of the arrears of the annuity in each case plus the present value of the

ABATEMENT—*continued.*

future payments bear to each other; the Legacy Duty payable on the sum apportioned to C. should be deducted from the whole fund, and the balance divided in the same proportion between B. and C. (*re Wilkins*, 27 Ch. D. 703; *Heath* v. *Nugent*, 29 B. 226, followed).

ABOLITION

Of Legacy Duty on leaseholds (s. 19 of 16 & 17 Vict. c. 51).

Of the distinction between the charge of Stamp Duty on Probates and that on Letters of Administration (43 Vict. c. 14).

Of the ONE per cent. Legacy and Succession Duty in respect of property on which Stamp Duty has been paid, and where grant taken out, or account delivered on or after June 1, 1881 (s. 41 of 44 Vict. c. 12).

Of the exemption of pecuniary legacies or shares of residue from Legacy Duty by reason of their being under £20 in value or amount (s. 42 of 44 Vict. c. 12).

Of Legacy Duty on charges on real estate, and the proceeds of sale thereof, where the testator dies on or after July 1, 1888 (s. 21 of 51 Vict. c. 8). These charges, etc., though now taxable as if "successions," yet remain "legacies," and are liable to all the laws incidental to "legacies."

Of the exemption of a succession, opening since June 1, 1889, from Succession Duty by reason of the value thereof being under £20 (s. 10 (2) 52 Vict. c. 7). The allowance to which a successor, upon taking a succession, is entitled by reason of the provisions of s. 38 of 16 & 17 Vict. c. 51, to be limited (so far as regards successions opening on or after June 1, 1889) to the value of the property which the successor may have acquired by any title not conferring a succession on him and which passes from the successor to some other person (52 Vict. c. 7, s. 10 (1)). See Appendix.

And as regards property chargeable with Estate Duty (Finance Act, 1894, s. 1).

(*a*) Probate and Inventory Duty under the Customs and Inland Revenue Act, 1881 (44 Vict. c. 12).

(*b*) Account Duty under s. 38 of said Act, and s. 11 of the Customs and Inland Revenue Act, 1889 (52 Vict. c. 8).

(*c*) The Additional Succession Duties under s. 21 of the Customs and Inland Revenue Act, 1888 (51 Vict. c. 7).

(*d*) The Goschen or Temporary Estate duty under ss. 5 & 6 of the Customs and Inland Revenue Act, 1889.

(*e*) The one per cent. Legacy or Succession Duty.

ABROAD.

A legacy receipt signed out of Great Britain may be stamped without penalty within twenty-one days after it is received in this country (48 Geo. 3, c. 149, s. 44).

As to payment of legacy when legatee abroad, see "Absence Beyond the Seas."

As to affidavit by executors resident abroad relating to trust property, see s. 50 of 55 Geo. 3, c. 184.

As to carriage of body from abroad, see "Funeral Expenses."

As to Death Duties payable on property situate abroad, see "Foreign Property."

Save under very exceptional circumstances it is not proper to appoint a trustee who resides abroad.

A will executed abroad, to be valid must conform with the law of the alien's

ABROAD—*continued.*

own country. In the goods of *Von Buseck* (6 P. D. 211; *Bloxam* v. *Favre*, 8 P. D. 101; 9 P. D. 130).

As to wills executed abroad by British subjects, see "Will." See also "Administration durante absentiâ"—"Administrator."

ABSENCE BEYOND THE SEAS.

Where a legacy cannot be paid to a legatee by reason of his infancy or absence beyond the seas the money may, after deducting the duty chargeable thereon, be paid into the Bank of England (s. 32 of 36 Geo. 3, c. 52).

ACCELERATION OF SUCCESSION.

Although Succession Duty becomes payable when the successor or any person in his right or on his behalf becomes entitled in possession (s. 20 of 16 & 17 Vict. c. 51), yet if the title to the succession is accelerated by reason of the surrender or extinction of any prior interest, then, unless previously commuted, the duty is to be paid "at the same time and in the same manner as if no such acceleration had taken place" (s. 15).

Example.

1. Advance of settled funds to a *cestui que trust* during lifetime of tenant for life.
2. Release by tenant for life of his life interest to the remainderman.
3. Release by annuitant to estate (devised in fee) on which annuity is charged.
4. Annuitant concurs with devisee in selling.

The right of the Crown in these cases is not affected by any private arrangement between the parties. Where, however, in Example 4, the sale was made in pursuance of a general power, the annuitant's concurrence will shift the claim for duty from the real estate to the proceeds or the property acquired therewith.

By a marriage settlement certain trust funds were settled upon the usual trusts, viz. to the husband and wife successively for life with remainder to the children of the marriage as the husband and wife jointly, or the survivor, should appoint, and in default of such appointment, equally among the children who should attain twenty-one or marriage, or die under that age leaving issue.

Power to trustees to advance all or any part of the children's expectant shares with the consent of the parents, or of the survivor, in writing, and on the death of the survivor at their own discretion. Portions of the trust funds were appointed in pursuance of this power and paid over to the children during the lives of the tenants for life.

Held, on the death of the surviving tenant for life, that as to the appointed part of the trust funds there had been an ACCELERATION of the title to the succession by the extinction of prior interests within s. 15, and that such part was, equally with the unappointed part, liable to Succession Duty (**Sitwell, Ex parte, Drury Lowe's Marriage Settlement, In re**, 21 Q. B. D. 466, 37 W. R. 238).

Estate Duty.

A., tenant for life, releases his life interest to B. (remainderman).

1. Generally. See "Beech Case."
2. Special case of gift within twelve months of A.'s death.

This as a gift *inter vivos* is liable to Estate Duty on the value of the "property taken" (44 Vict. c. 12, s. 38 2(*a*), incorporated in Finance Act, 1894).

In a devise or bequest to A. for life with remainder to B. in fee, or absolutely, where

ACCELERATION OF SUCCESSION—*continued.*

A. is incapable of taking or his life interest is revoked, the remainder is valid, and will be accelerated (*Jull* v. *Jacobs*, 3 Ch. D. 703; *In re Clark, Clark* v. *Randall*, 31 Ch. D. 72).

Where A. devised real estate to B. for life, remainder to his (B.'s) children, and B.'s wife witnessed the will, and there were no children, it was held that the heir at law took the income during B.'s life, and so long as B. had no children (*Re Townsend's Estate*, 34 C. D. 357).

ACCOUNT.

Legacy Duty, and Succession Duty, and Estate Duty (C 1, C 2, C 3) Accounts may, except where the parties desire to commute (see "Commutation"), be presented personally at the head office, or, where the address to which the office is to communicate is OUTSIDE the Metropolitan Postal District, may be forwarded by post. (*a*) The accounts after examination in connection with the official entries of the will, settlement, etc., under which the claims for duty arise, are, if satisfactory, assessed and registered.

In TOWN cases (*i.e.* cases presented personally) a warrant is then issued for the payment of the duty, which is thereupon paid to, and the account controlled by the Accountant and Controller-General, and ultimately stamped (*b*) and handed to the parties.

In COUNTRY cases (*i.e.* cases sent by post) an assessment letter, stating the amount of the duty and the mode of payment, is forwarded to the accounting parties or their agents, to whom, on receipt of the duty, the accounts after being registered, controlled, and stamped, are forwarded.

Probate and Account Duty.—S. 10 (1) of 43 Vict. c. 14 first provides for an account to accompany the affidavit of value, which affidavit must now (44 Vict. c. 12, s. 29) extend to the verification of the account. See also ss. 38 & 39 of 44 Vict. c. 12 as to ACCOUNT which must (where the property passing is above £100 in value) be delivered in connection with the payment of ACCOUNT Stamp Duty.

28 & 29 Vict. c. 104, s. 55 empowers the Commissioners of Inland Revenue to sue the accountable parties, and enforce the delivery of ACCOUNTS.

Legacy and Succession Duty.—SS. 47 and 48 of the Succession Duty Act, 1853, provide for the enforcement of Delivery of Legacy and Succession Duty Accounts. These sections, however, so far as they relate to England are repealed by the 28 & 29 Vict. c. 104, which now regulates the mode of procedure (*q.v.*).

S. 49 enacts that accounting parties must verify their accounts by production of books and documents (*q.v.*).

Estate Duty.—S. 8 (3) of the Finance Act, 1894, enacts that, the executor of the deceased shall, to the best of his knowledge and belief, **specify in appropriate accounts** annexed to the Inland Revenue affidavit all the property in respect of which Estate Duty is payable upon the death of the deceased.

S. 8 (4) enacts that, where property passes on the death of the deceased, and his executor is not accountable for the Estate Duty in respect of such property, every person to whom any property so passes for any beneficial interest in

(*a*) *Forms to lead to a return of duty must be presented personally* or by an agent, and cannot be dealt with through the post; but this rule has been relaxed with regard to simple cases, or where the amount to be returned is small.

(*b*) The Forms D 1 and D 2 are receipted, but not stamped.

ACCOUNT—*continued.*

possession, and also, to the extent of the property actually received or disposed of by him, every trustee, guardian, committee, or other person in whom any interest in the property so passing, or the management thereof is at any time vested, and every person in whom the same is vested in possession by alienation or other derivative title, shall be accountable for the Estate Duty on the property, and shall, within the time required by this Act, or such later time as the Commissioners allow, **deliver to the Commissioners and verify an account**, to the best of his knowledge and belief, of the property.

S. 6 (4) enacts that Estate Duty, so far as not paid by the executor, shall be collected upon an account setting forth the particulars of the property, and delivered to the Commissioners within six months after the death by the person accountable for the duty, or within such further time as the Commissioners may allow.

S. 8 (14) enacts that all . . . accounts . . . shall be in such form and contain such particulars, as may be prescribed, and if so required by the Commissioners shall be in duplicate, and accounts and statements shall be delivered and verified on oath and by production of books and documents in the manner prescribed, and any person who wilfully fails to comply with the provisions of this enactment shall be liable to the penalty above in this section mentioned.

S. 14 (3) enacts that "accounts and valuations as settled between the person entitled to recover the same and the Commissioners" shall bind any person from whom a rateable part of Estate Duty can be recovered under this section.

See also "Affidavit."

Corrective Affidavits and Accounts in cases over £25,000 are now dealt with by special appointment.

To book an appointment it is not necessary to wait until the Corrective Affidavits or Accounts have been sworn, provided the original Affidavits or Accounts have been examined.

Where, however, on presenting a Corrective Affidavit it is discovered that the original affidavit has not been examined, or the examination thereof has not been completed, it will still be advisable to secure an appointment for the examination of the Corrective Affidavit.

The date to be fixed should be regulated by the time necessary to complete such examination, unless of course the parties desire the Corrective Affidavit to be assessed without prejudice to further claims for duty which may arise on such examination.

Forms of Account.—C. 1 (Estate Duty). C. 2 (Settlement Estate Duty). C. 3 (Instalments of Estate Duty and Settlement Estate Duty). D. 2 (Corrective Account).

See also "Forms in Use."

ACCOUNTABLE PERSONS. See "Payment."

ACCOUNT STAMP DUTY.

1. This tax was created by s. 38 of 44 Vict. c. 12, and is a Stamp Duty imposed (with a view to prevent evasion of Probate Duty, to which it is analogous) in respect of certain voluntary gifts and settlements of personal property (including leaseholds) made by any person dying after June 1, 1881.
2. It is only leviable on property passing on a death before August 2, 1894, and Estate Duty is not payable on property on which this Duty (or Probate Duty,

ACCOUNT STAMP DUTY—*continued.*

or Inventory Duty) has been paid or is payable unless the deceased was "at the time of his death, or had been at any time since the will or disposition took effect" competent to dispose (*q.v.*) of the property in question, Finance Act, 1894, s. 21 (1).

THE SCALE.

£.		£.	£.	*s.*
Above 100	and not above	150	3	0
„ 150	„ „	200	4	0
„ 200	„ „	250	5	0
„ 250	„ „	300	6	0
„ 300	„ „	350	7	0
„ 350	„ „	400	8	0
„ 400	„ „	450	9	0
„ 450	„ „	500	10	0
„ 500	„ „	550	13	15
„ 550	„ „	600	15	0
„ 600	„ „	650	16	5
„ 650	„ „	700	17	10
„ 700	„ „	750	18	15
„ 750	„ „	800	20	0
„ 800	„ „	850	21	5
„ 850	„ „	900	22	10
„ 900	„ „	950	23	15
„ 950	„ „	1000	25	0
„ 1000	„ „	1100	33	0

And for every additional full sum of £100, and for the fractional part of £100 over any multiple of £100 . . . . . £3.

PROPERTY LIABLE TO THE DUTY.

Personal or moveable property (including leaseholds) of the following description:—

1. Any property taken as a *donatio mortis causâ* made by any person **dying on or after June 1, 1881,** or taken under a voluntary disposition, made by any person so dying, purporting to operate as an immediate gift *inter vivos* whether by way of transfer, delivery, declaration of trust or otherwise, which shall not have been *bonâ fide* made **twelve months** (*a*) before the death of the deceased. The description of "property" herein referred to shall include property taken under any gift, whenever made, of which property *bonâ fide* possession and enjoyment shall not have been assumed by the donee immediately upon the gift and thenceforward retained, to the entire exclusion of the donor or of any benefit to him by contract or otherwise.
2. Any property which a person dying on or after such day having been absolutely entitled thereto, has voluntarily caused or may voluntarily cause to be (*b*) transferred to or vested in himself and any other person jointly whether by disposition or otherwise, so that the beneficial interest therein or in some part thereof passes or accrues by survivorship on his death to such other person.

(*a*) The word "twelve" was substituted for the word "three" in sub-s. 2 (*a*) of s. 38 of 44 Vict. c. 12, by s. 11 (1) of 52 Vict. c. 7 (June 1, 1889).

(*b*) This expression is to include also any purchase or investment effected by the person who was absolutely entitled to the property either by himself alone, or in concert, or by arrangement, with any other person, see s. 11 of 52 Vict. c. 7.

ACCOUNT STAMP DUTY—*continued.*

3. Any property passing under any past or future (*a*) voluntary settlement made by any person dying on or after such day, by deed or any other disposition not taking effect as a will, whether expressed in writing or otherwise, whereby an interest in such property or the proceeds of sale thereof, for life or any other period determinable by reference to death is reserved either expressly or by implication to the settlor, or whereby the settlor may have reserved to himself the right, by the exercise of any power, to restore to himself, or to reclaim the absolute interest in such property.
4. Any money received under a policy of assurance **effected by any person dying on or after June 1, 1889, on his life,** where the policy is wholly kept up by him for the benefit of a donee, whether nominee or assignee, or a part of such money in proportion to the premiums paid by him, where the policy is partially kept up by him for such benefit. See "Policy."

Cases on the Account Duty.

1. *Attorney-General* v. *Booth.* Gift *inter vivos* (*q.v.*).
2. „ v. *Chapman.* Appointment of Reversion: voluntary settlement (*q.v.*).
3. „ v. *Dodd.* Conversion (*q.v.*).
4. „ v. *Ellis.* Joint Investment (*q.v.*).
5. „ v. *Gosling.* Partnership deed: voluntary settlement (*q.v.*).
6. „ v. *Heywood.* Interest for life: voluntary settlement (*q.v.*).
7. „ v. *Jacob Smith.* Volunteer: voluntary settlement (*q.v.*).
8. „ v. *Rathdonnell.* Volunteer: voluntary settlement (*q.v.*).
9. „ v. *Theobald.* Construction of s. 11 of 52 Vict. c. 7: voluntary sett. (*q.v.*).
10. „ v. *Wendt.* Partnership property (*q.v.*).
11. „ v. *Worrall.* Reservation of Benefit (*q.v.*).
12. *Croft, In re.* Apportionment of duty (*q.v.*).
13. *Crossman* v. *The Queen.* Definition of voluntary settlement: vol. sett. (*q.v.*).
14. *De Mestre* v. *West.* Volunteer: voluntary settlement (*q.v.*).
15. *Lord-Advocate* v. *Robertson.* Policy Moneys (*q.v.*).
16. „ v. *Wilson.* Voluntary settlement (*q.v.*).

It is important to note that section 2 (l.c.) of the Finance Act, 1894, made liable to Estate Duty:—

Property which would be required on the death of the deceased to be included in an account under sec. 38 of the Customs and Inland Revenue Act, 1881, as amended by sec. 11 of the Customs and Inland Revenue Act, 1889, if those sections were herein enacted and extended to real property as well as personal property, and the words "voluntary" and "voluntarily" and a reference to a "volunteer" were omitted therefrom.

As to **accountability, amount** upon which duty payable, etc., see "Payment." See also "Donatio Mortis Causâ," "Gift Inter Vivos," "Joint Investment," "Reservation of Benefit," "Voluntary Settlement," "Advancement," "Exemptions."

ACCRETIONS.

1. Accretions between the death and the date of the grant of probate or administration (and of ACCOUNT where Account Stamp Duty is payable) are liable to

(*a*) The expression "voluntary settlement" is to include any trust, whether expressed in writing or otherwise, in favour of a volunteer, and, if contained in a deed or other instrument effecting the settlement, whether such deed or other instrument was made for valuable consideration or not as between the settlor and any other person.

ACCRETIONS—*continued.*

Probate or Administration Duty (*Partington* v. *Attorney-General*, L. R. 4 Eng. & Ir. H. L. App. 100); [but where Estate Duty is payable interest at the rate of 3 per cent. is charged from the death in lieu of dividends, rents, or other accretions *since* that period.]

2. The same rule also applies to accretions with regard to legacies (*Thomas* v. *Montgomery*, 3 Russ. 502), residues (*Attorney-General* v. *Cavendish*, Wightw. 82), partnership profits (*Yates* v. *Finn*, 13 Ch. D. 839), leaseholds (*Bate* v. *Payne*, 13 Q. B. 269), and also to accretions of personalty passing under settlement, and of real estate directed to be sold. See also *Adv.-General* v. *Oswald* (10 Sco. Sess. Ca. (2 Ser.), 969); *Nisbett's Trustees* v. *Learmonth* (8 Sco. Sess. Ca. (2 Ser.), 69).

This rule is, however, modified in practice. Where there are actually existing accumulations at the date when the Legacy or Succession Duty Account in respect of personal property is delivered, then duty is to be taken as heretofore on the value of the property at the date of delivery, plus the accumulations. Subject to this, the practice is now to fix the value at the date when such duty ought to have been paid, with actual accumulations up to that date (if any), and the amount of duty on such value with accumulations (if any) having been found, interest on this duty at the rate of 3 per cent. per annum from such date to the date of the assessment is to be calculated.

Accretions to be brought into Residuary Account.

Rents of real and leasehold estates directed to be sold to the time of sale, if sold; if not, to the date of this account.

Dividend on the stocks and funds sold to the time of sale and of those remaining unsold, including the last dividends.

Interest on Exchequer Bills sold or paid off to the time of sale or payment, and of those remaining unsold, to the date of this account.

Interest on bonds, mortgages, and other securities paid off, to the day of payment and of those outstanding, to the date of this account.

Interest on £ being the balance of cash in hand as shown at the foot of p. 2, to the date of this account.

Income of canal, railway, and other shares, to the time of sale, and of those remaining unsold, and on other property, yielding an income not included in any of the above items, to the date of this account.

The value of the benefit accruing to the executor or other person entitled to the residue from the interest of money or dividends of stock retained to answer vested or contingent legacies, payable at a future day without the intermediate interest or dividends.

3. The Crown was formerly entitled by s. 9 of 31 & 32 Vict. c. 124, to 4 per cent. duty on arrears of Legacy and Succession Duty; but the rate of 4 per cent. was repealed by s. 40 of the Finance Act, 1896, and s. 18 (2) of that Act provides for a **rate of 3 per cent. on all Death Duties.**

4. Accretions (bonuses, dividends, etc.), if declared before the testator's death, form part of the testator's general estate (*Lock* v. *Venables*, 27 B. 598); where declared after the death, they are taken by the legatee of the shares.

Where the accretion accrues *de die in diem*, see "Apportionment."

Where the accretion goes to a legatee who is a tenant for life, then, as between him and the remainderman, a bonus declared out of capital will be capital (*Paris* v. *Paris*, 10 Ves. 185), and a bonus declared out of profits (though

ACCRETIONS—*continued.*

accumulated) will be income (*Barclay* v. *Wainwright*, 14 Ves. 66). If, however, the company has power to declare the bonus to be either capital or income, and to apply it accordingly, its decision determines the question as between the tenant for life and the remainderman (*In re Burton's Trust*, L. R. 5 Eq. 238).

ACCRUER.

General Rule.—Where distinct legacies are given with survivorship, the clause of survivorship, unless extended by particular words, attaches only to the original shares, and does not affect the accruing shares.

Secus where the disposition is not of separate legacies, but of one aggregate fund, which the testator meant should remain an aggregate fund and not to be broken into fragments, should some of the persons to whom interests therein were given happen to die (*Williams Exors.* 9th ed.).

1. X. devises real estate or bequeaths personal estate to A., B., and C., as tenants in common, and directs that if any of them die without issue the share of the one so dying shall be divided among the survivors.
   (*a*) A. and B. both predecease X.
   (*b*) All survive X., and A. and B. successively die without issue.

   In (*a*) The original shares of A. and B. accrue to C.

   In (*b*) B.'s original share will accrue to C.; but the share which accrued to B. on the death of A., being a new legacy, will not accrue to C. The testator X. may, of course, show a contrary intention; for example, where the words "and interest" are added to the word "share" (*Douglas* v. *Andrews*, 14 B. 347); or where testator directs accrued shares to go as original shares (*Milsom* v. *Awdry*, 5 Ves. 465); and where the bequest is of residue, see *Goodman* v. *Goodman* (1 De G. & Sm. 695).
2. Where the gift is to A., B., and C. equally with a direction that the share of any one so dying without issue is to go equally between the survivors, and if any die leaving issue, his share is to go to his issue, then if A. dies first without issue, and B. predeceases C., B.'s children will take his accrued as well as his original share; but should B. die without issue his original share only would survive to C.
3. A gift to A., B., and C. with benefit of survivorship passes both original and accrued shares (*In re Crawhall's Trusts*, 2 Jur. N.S. 892).

ACCUMULATIONS.

1. Where personal property is directed to be accumulated and divided, the accumulations are held liable to duty as well as the principal (**Advocate-General** *v.* **Oswald,** 10 Sco. Sess. Ca. (2 Ser.) 69).
2. Where real estate is devised to trustees upon trust **to accumulate the rents** during a minority or for other period with a direction to pay the accumulations on the termination of such period, either to the devisee of the real estate, or to another, the said accumulations will be chargeable with duty on the aggregate amount as a deferred succession to the person entitled, the duty being payable at once and not by instalments.

   A. (*ob.* 1842) devised real estate upon trust **to accumulate the rents** during the joint lives of B. and his wife C., and to invest the accumulations in the purchase of other real estate, and subject thereto (in the events which happened) to D. (*ob.* Jan. 19, 1863) for life, remainder to his second and other

ACCUMULATIONS—*continued.*

younger sons successively in tail. The defendant E. (second son of D.) became entitled on D.'s death to the real estate subject to the trust for accumulation. The term of twenty-one years from the death of A. expired on Jan. 25, 1863.

Held, that s. 2 applies not only where the title accrues on death, but also to cases where the title has accrued before the Act but is made an interest in possession at once or "after an interval" on a death occurring after the Act (**Attorney-General** *v.* **Gell**, 3 Hurlst. & Colt. 615).

A. (*ob.* June, 1850) devised real estate upon trust **to accumulate the rents** for twenty-one years (the term expired, June, 1871), and, subject thereto, at his "heir or co-heiresses-at-law."

B., the heir-at-law of A., died in 1865.

Four co-heiresses of A. became entitled to the property in 1871 on the expiration of the term.

Held, that Succession Duty was payable, but Wickens, V.C., stated that he gave his decision on the authority of *Attorney-General* v. *Gell* (supra), and "upon that authority only" (**Ring** *v.* **Jarman**, L. R. 14 Eq. 357).

A. devised real estate upon trust for B. in fee, if and when he should attain the age of twenty-five years, with a gift over if he should die under that age without leaving issue, and directed the trustees to provide for the successor's maintenance and education out of the rents of the real estate, and **to accumulate the surplus rents** until the successor should attain twenty-five years of age.

Before the successor attained twenty-five, the trustees under the powers given by the will, and with the sanction of the Court, applied sums amounting to £2453 10*s.* 0*d.* out of the accumulations in making certain non-productive improvements to the real estate.

Duty was claimed on this amount as on a succession to personal property, and as payable when the money was expended, but the claim was resisted on the ground that the successor having attained twenty-five, succession duty was payable on the then value of the real estate, and that the Department were, in effect, claiming duty twice over.

The matter came on for hearing upon a petition in the Chancery Division on July 28, and Aug. 4, 1894, before Mr. Justice Chitty, who held that duty was payable as claimed (**Thynne** *v.* **St. Maur**), p. lii. of the "Thirty-eighth Report of the Commissioners of Inland Revenue."

3. Accumulations must be confined to one of the periods allowed by the THELLUSSON ACT (*infra*); but a direction to accumulate which exceeds the authorized period (for example, a direction to accumulate during a life, an estate for life being larger than an estate for years), is not altogether void, but void only as to the excess (*Griffiths* v. *Vere*, 9 Ves. 127, Tudor L. C. R. P. 497). The income accruing during the remainder of the period to which the direction extends, passes by way of resulting trust, so far as it consists of income of real estate to the testator's heir-at-law, or residuary devisee, and so far as it consists of income of personal estate, to his next-of-kin or residuary legatee.

Accumulations of income made during the minority of a tenant for life belong to him absolutely, and s. 43 of the Conveyancing Act, 1881, does not convert them into capital (*In re Humphreys*; *Humphreys* v. *Levett* (1893), 3 Ch. 1.

4. A trust for accumulation beyond the limits of perpetuity is entirely void *ab initio*, and this whether limited before or since the Thellusson Act, and whether

ACCUMULATIONS—*continued.*

it be for a purpose excepted from the operation of the Act or not, unless it be for the payment of debts.

5. The THELLUSSON ACT (39 & 40 Geo. 3, c. 98).

This Act was passed in consequence of Mr. Thellusson's will. He kept within the rule against perpetuities (*q.v.*), directing his income to be accumulated during the lives of many persons, some being great-grandchildren, and to vest in descendants living at their death.

Prior to this Act the only limit to the duration of a trust to accumulate was that imposed by the rule against perpetuities (*q.v.*).

The ACT provided that the income of settled property, whether real or personal, should not accumulate for longer than—

The life of the donor;

or, Twenty-one years from the donor's death (in calculating the day of death is excluded, and the period must be that immediately following the death).

or, During the minority of any person living, or *en ventre sa mère* at the donor's death.

or, During the minority of any person who, under the trusts directing such accumulation, would, if of full age, be entitled to the rents and profits or the interest directed to be accumulated, but not during the period before the birth of said person (*Haley* v. *Bannister*, 4 Mad. 275).

The above periods are alternative, and one or the other may be selected at option. Provisions for payment of debts, (*a*)—for creditors could at any time have enforced their claims against the corpus—raising portions for children, (*b*) repairing buildings, and directions relating to the produce of timber are excepted from the Act. The Accumulations Act, 1892 (55 Vict. c. 58), restricts the testator to the fourth period, where the accumulations are directed "wholly or partially for the purpose of the purchase of land only," that is, such purchases can only be made during the minority of a devisee who, otherwise, would be entitled to receive the rents.

Accumulations for improvements of an estate (properly payable out of income) are within the Act (*Vine* v. *Raleigh*, (1891), 2 Ch. 13; 63 L. T. 573).

Direction by testator to accumulate until legatees not *in esse*, attain twenty-one, is good for twenty-one years from the death (*Longden* v. *Simson*, 12 Ves. 295).

Testator effects policies on the lives of his children, and by his will directs that the policies are to be kept up and to be settled (in the event of marriage) on their respective wives and children. Such direction is not caught by the Act (*In re Vaughan*; *Halford* v. *Close*, W. N. (1883), 89).

By 11 & 12 Vict. c. 36, s. 41, the Thellusson Act is extended to heritable property in Scotland, but does not apply to Ireland. However, the Act applies to a settlement by A. of English land, notwithstanding A. has an Irish domicile (*Freke* v. *Lord Carbery*, L. R. 16 Eq. 461).

The Accumulation Act, 1892, is apparently not to be read with Thellusson's Act, and is not expressly limited to Great Britain. It would, therefore, appear to apply to Ireland.

ADDITIONAL SUCCESSION DUTY.

The additional duties ($\frac{1}{2}$ per cent. for lineals, $1\frac{1}{2}$ per cent. for collaterals and strangers in blood, imposed by s. 21 of 51 Vict. c. 8), did not apply to property paying Stamp Duty (*e.g.* leaseholds passing under a will or intestacy, or under

(*a*) The payment of debts, whether of testator or other person, must be the primary object of the accumulation.

(*b*) Whether of testator, or of a person taking an interest under the will.

ADDITIONAL SUCCESSION DUTY—*continued.*

a voluntary settlement where account Stamp Duty was leviable), and are now abolished as regards property paying Estate Duty (which is also a Stamp Duty), Finance Act, 1894, s. 1.

ADEMPTION.

1. **Of specific legacies.**

Specific legacies are adeemed by the non-existence (*a*), removal (*b*), or change of form (*c*), of the subject-matter of the bequest.

(*a*) For example, destruction by fire of house specifically bequeathed; lapse of insurance policy; receipt of debt by testator in his lifetime.

B. bequeaths a share to which he is entitled under the will of A. to C. B. subsequently receives the share. The mere receipt of the share will not adeem the gift if B. does not in the will refer to the share as a chose in action and if he invests it and keeps it apart from the rest of his property (*Lee* v. *Lee*, 27 L. J. Ch. 824).

(*b*) Goods described as in a particular place removed, not accidentally or temporarily, to another place; unless intended to be enjoyed apart from any connection with the particular place, in which case no ademption will be effected.

(*c*) For example, conversion by testator of stock specifically bequeathed; an ademption is effected even though the money when realized is laid out again in similar stock. However, where, by a resolution of the Company, shares are converted into stock, there is no ademption, for here the change made in the thing specifically bequeathed leaves it to all intents and purposes the same.

A. specifically bequeaths his share in a particular partnership. A. leaves the firm; the legacy is adeemed. Otherwise, where the amount of the share is varied (*Re Russell*, 19 Ch. D. 432).

The confirmation of a will by a codicil will not revive a legacy which has been adeemed in the mean time (*Drinkwater* v. *Falconer*, 2 Ves. Sen. 626).

And where a testator having given a general legacy, by a subsequent instrument makes it specific, the ademption of the specific legacy, without more will not set up the general legacy (*Hertford* v. *Lowther*, 7 B. 107).

Note that s. 24 of the WILLS ACT enacts that "every will shall be construed, with reference to the real and personal estate comprised in it, to speak and take effect as if it had been executed immediately before the death of the testator, unless a contrary intention shall appear by the will."

Where, therefore, testator gives no indication that the particular legacy shall apply only to an object belonging to him at the date of the will, the legacy becomes generic rather than specific, in which case there can be no ademption.

2. **Of general legacies** to children, etc., by portions or subsequent gifts given in satisfaction thereof in testator's lifetime.

Where A. gives a legacy to B. (to whom A. stands in *loco parentis*), not stating the purpose for which he gives it, he is understood to give a portion, and as equity does not favour double portions, if A. subsequently advances a portion on B.'s marriage, it is presumed to be *pro tanto* a satisfaction of the legacy, the value of the advance being taken as at the time it was made (*Watson* v. *Watson*, 33 Beav. 574). This rule of presumption against double portions applies only where A. and B. are parent and child, or where A. stands in *loco parentis* to B. (*Suisse* v. *Lowther*, 2 Ha. 424, 425).

Where there is a pecuniary bequest to a child, and subsequent settlement on the child's marriage, there is a *pro tanto* ademption of the legacy (*Lord Durham*

ADEMPTION—*continued.*

v. *Wharton*, 3 Cl. & F. 146); but an advance to a child will not adeem a substitutional gift to the issue should the child die in the testator's lifetime (*Rose* v. *Rogers*, 39 L. J. Ch. 791).

However, no ademption is effected

(*a*) By small advances for a particular purpose;

(*b*) By a payment before the date of the will;

(*c*) Where the legacy and the subsequent gift are of different character or are supposed to be given for different purposes (*e.g.*, a legacy and a subsequent gift of stock-in-trade, etc.); or where the legacy is certain and the gift contingent (*Spinks* v. *Robins*, 2 Atk. 493).

(*d*) Where a legacy to a daughter is followed by an advance to her on her marriage for an outfit, or by a gift to her husband.

In the case of a legacy by A. to B. (to whom A. does NOT stand in *loco parentis*) and the legacy is stated to be given for a particular purpose, an ademption is effected by a subsequent advance for the same purpose (*Bebeze* v. *Mann*, 2 Bro. C.C. 519).

3. Satisfaction of portions (secured by settlement) by legacies, see "Satisfaction." Satisfaction of legacies by subsequent legacies, see "Cumulative Legacies."

ADHESIVE STAMPS (44 Vict. c. 12, s. 26, sub-s. 2).

May be used for **Probate Duty.**

(1) For denoting the 30*s.* stamp (s. 33);

(2) For denoting the *ad valorem* duties on affidavits where the net value does not exceed £1000.

(3) For denoting the duty attaching to the odd hundreds (impressed stamps being used for the thousands), where the net value exceeds £1000.

For the 15*s.* fee (s. 33) an adhesive judicature stamp has been provided.

Adhesive stamps are, however, not available for denoting the duty on an account to be delivered under s. 38.

Are used in England (impressed stamps in Scotland and Ireland) for **Estate Duty** for denoting the fixed duties of 30*s.* and 50*s.*, Finance Act, 1894, s. 16 (1); s. 8 (16). Impressed stamps—denoting the name and rate of duty—are, however, used for the *ad valorem* duty and settlement estate duty, and interest thereon. Postage stamps are used for payment of interest on fixed duties in England and Scotland; in Ireland impressed stamps are used for this purpose.

ADMINISTRATION BOND.

The Court of Probate Act, 1857, s. 82, enacts that "Every administration bond shall be in a penalty of double the amount under which the estate and effects of the deceased shall be sworn, unless the Court or district registrar (as the case may be) shall in any case think fit to direct the same to be reduced, in which case it shall be lawful for the Court or district registrar to do so; and the Court or district registrar may also direct that more bonds than one shall be given so as to limit the liability of any surety to such amount as the Court or district registrar shall think reasonable."

Care must be taken that the penalty inserted in the bond is double the gross (not net) amount of the personal estate.

The registrars are to take care (as far as possible) that the sureties to administration bonds are responsible persons. Rule 41 (1862).

S. 81 enacts that "Every person to whom any grant of administration shall be committed shall give bond to the judge of the Court of Probate, to enure for the

ADMINISTRATION BOND—*continued.*

benefit of the judge for the time being, and, if the Court of Probate, or (in the case of a grant from the district registry) the district registrar, shall require, with one or more surety or sureties, conditioned for duly collecting, getting in and administering the personal estate of the deceased, which bond shall be in such form as the judge shall, from time to time, by any general or special order direct."

Number of Sureties.

One, where the estate does not exceed £50.

Two, in all other cases, "unless the administrator be the husband of the deceased or his representative, in which case but one surety will be required." Rule 39 (1862).

An administration bond may now be given by a married woman without her husband being a party thereto (*Re Harriet Ayres*, 8 P. Div. 168).

ADMINISTRATION DUTY

Formerly exceeded the Probate Duty by about one-half; but assimilated thereto by the 43 Vict. c. 14, s. 27 (Appendix).

ADMINISTRATION, LETTERS OF.

Order in which next of kin are entitled thereto—

1. Husband or wife.
2. Child or children.
3. Grandchild or grandchildren.
4. Great-grandchildren.
5. Father.
6. Mother.
7. Brothers and sisters.
8. Grandfathers or grandmothers.
9. Nephews, nieces, uncles, aunts, great-grandfathers or great-grandmothers.
10. Great-nephews or great-nieces, etc.

The husband, even since the M. W. P. A. 1882 (*Re Lambert*, 39 C. D. 626), and wife are usually first preferred, but they do not take as next-of-kin (21 Hand, c. 5; *Lee* v. *Lee*, 2 L. T. ref. N. S. 532).

See also "Land Transfer Act," 1897.

ADMINISTRATION SUIT.

The Court, in suits for the administration of property, is to provide for the payment of Legacy Duty (s. 25 of 36 Geo. 3, c. 52) and Succession Duty (s. 53 of 16 & 17 Vict. c. 51). See *Bryan* v. *Mansion*, 3 Jur. N. S. 475.

It was decided in the case of *Foster* v. *Ley* (2 Bing. N. C. 269) that where the Court omits to provide for the duty, and the executor is subsequently compelled to pay it, he is entitled to recover the amount from the legatee.

The pendency of an administration suit does not relieve executors from their liability to deliver an account of the duty upon any legacies which they have paid (*In re Sammon*, 3 Mee. & W. 381).

Moreover, when the Court has to provide for the payment of the duty, if the executor or administrator stands by and permits the tenant for life to receive the income of the fund in Court under an order of the Court without the duty being deducted, he cannot claim to be recouped out of the corpus in the event of having to account for the duty to the Crown (*Bowra* v. *Rhodes*, 10 W. R., 747).

ADMINISTRATOR.

He to whom the goods and effects of a person dying intestate, or without executors, appointing, accepting, or surviving, are committed by the Probate Court (now the Probate, Divorce, and Admiralty Division of the High Court of Justice: Jud. Act, 1873, s. 34).

The administrator derives his title not, like an executor, from the will, but entirely from the Court, and while, therefore, an executor can perform most of the acts appertaining to his office before probate, an administrator, as a general rule, can do nothing before the letters of administration are granted.

This rule, however, has been modified on the equitable ground that were it too literally followed hardship might ensue to persons beneficially entitled, and it is now held that the letters of administration, when granted, have a retrospective effect and relate back to the death (*Foster* v. *Bates*, 12 M. & W. 226).

After the administration is granted, the power of an administrator is equal to and with the power of an executor.

But the authority of an administrator who is merely the officer of the Court cannot be transmitted by him to his executor or administrator. Where two administrators are appointed, on the death of one, the survivor becomes sole administrator, for here the office, like that of an executor, survives.

The Court is opposed to a joint administration except under special circumstances; see conflicting decisions as to the authority of administrator (*Hudson* v. *Hudson* 1 Atk. 460) where it was held to be joint only; *Jacomb* v. *Harewood* (2 Ves. Sen. 265) where the contrary was decided.

The following are examples of limited administrations:—

Administration durante minore ætate—granted where an infant is entitled to administration, or is appointed sole executor. The grant is made to the duly appointed guardian of the infant for his use and benefit until he attains the age of twenty-one years, when it ceases.

Administration durante absentiâ—granted where the executor named in the will or the next-of-kin are beyond sea, lest the goods perish or the debts be lost.

The administration ceases the moment the executor or next-of-kin returns.

Where, however, probate has been granted and the executor goes abroad, the statute Geo. III. c. 87, s. 1, enacts that if, at the expiration of twelve months from death of testator, the executor to whom probate has been granted does not reside within the jurisdiction of his Majesty's courts, a creditor, next-of-kin or legatee may obtain special administration on a five-shilling stamp and shall pay no further duty.

Administration pendente lite—granted where a suit is commenced in the Probate Court, concerning the validity of a will or the right to administration, until the suit be determined, in order that there may be somebody to take care of the testator's estate.

The Court of Probate Act, 1857, s. 70, expressly enacts that an administrator pendente lite shall have all the rights and powers of a general administrator, other than the right of distributing the residue.

Administration cum testamento annexo—granted where there is no executor named in the will, or if a person be named who is incapable, or one who refuses to act, or where he dies before the testator, or before he has proved the will, or where the executor dies intestate, having proved the will, but before having administered all the personal estate. In the last instance, the administration is also called "administration de bonis non."

Such a grant is made to him who has the greatest interest. For example, the residuary legatee in preference to the next-of-kin; to the next-of-kin where the

ADMINISTRATOR—*continued.*

residuary legatee (if any) declines, or where there is no residuary legatee, and if the next-of-kin decline, to a legatee, or creditor upon notice of the application being given to the next-of-kin.

Administration de bonis non—granted (*a*) *cum testamento annexo*, as above (*b*) where the sole administrator dies before he has fully administered. Here, also, as above, apart from special circumstances, administration will be granted to him who has the greatest interest in the effects of the original intestate.

Thus where A. [sole or surviving executor] dies intestate without having fully administered, administration will be granted to the residuary legatee under the will, or to a creditor should the residuary legatee renounce, or, where there is no residue, a grant *de bonis non* may be made to a specific legatee without the residuary legatee being cited.

De bonis non grants are not required in the case of a grant to the Solicitor of the Treasury as the original grant is to him and his successors in office for ever (39 & 40 Vict. c. 18, s. 2).

Where a husband takes out administration to his wife and dies, administration will be granted to his representatives, unless it can be shown that the wife's next of kin are entitled to the beneficial interest (*Fielder* v. *Hanger*, 3 Hagg. 769).

Letters of administration *de bonis non*, granted after April 1, 1880, fall to be stamped under 44 Vict. c. 12, when a denoting stamp is not impressed.

An **ancillary administration**, so called because it is subordinate to the original administration, is granted for collecting the assets of foreigners.

Other examples of temporary and limited administration—

Administration limited till a lost will be found.

Administration limited till a will be transmitted to England.

Administration limited during incapacity of executor-administration of next-of-kin.

Administration limited to a particular friend (in the goods of *Dodgson*, Sw. & Tr. 259).

Administration limited to the performance of a single act (*e.g.* to assign a trust term).

The parties entitled to the general grant may in these cases take out a *cæterorum* representation.

Liability of administrators to Estate, Probate and Legacy Duty :—see "Executors."

Administrators are required by s. 42 of 55 Geo. 3, c. 184, in cases where too little Stamp Duty has been paid at first, to give the proper security before the grant is duly stamped.

ADVANCE, PAYMENT IN.

Succession Duty may be paid in advance, s. 40 of 16 & 17 Vict. c. 51, which enacts that it shall be lawful for the Commissioners to receive any duty tendered to them in advance, and to allow discount thereon at the rate of £4 (*a*) per centum per annum, or at such other rate as may from time to time be directed by the Commissioners of Her Majesty's Treasury; and no person, by reason of his having made any payment of duty in advance, shall be prejudiced in his right to have any repayment of duty made to him to which he may become entitled under any of the provisions of this Act.

This provision is applied in practice to Legacy Duty, see "Discount."

Although interest on estate duty on real estate does not run till the expiration of twelve months from the death, no statutory provision exists for allowance of discount by reason of the payment thereof in advance.

(*a*) Now altered to 3 per cent., see "Discount."

ADVANCEMENT and ADVANCES.

1. Under voluntary settlement.

(*a*) Account Stamp Duty is only payable on the property which actually passes under the voluntary settlement, and not upon the property, which, though originally comprised therein, has been taken out of it by means of the exercise of any power or in the settlor's lifetime.

If, however, the property taken out of the settlement has been handed over to the expectant owner in acceleration of his succession, Succession Duty will be payable. Where the beneficiaries are lineals, the exemption in s. 41 of 44 Vict. c. 12, will not of course apply.

If, however, handed over within twelve (formerly three) months before settlor's death, Account Stamp Duty will be payable (44 Vict. c. 12, s. 38 (2a); 52 Vict. c. 7, s. 11 (1)), in respect of the value of the life interest surrendered.

(*b*) Where a husband, A., by post-nuptial settlement settles a fund on his WIFE, B., for her life for her separate use, with remainder to himself for life, with remainder to the children, and A. dies first after June 1, 1881, Account Stamp Duty is claimed as being due on his death, although not payable until the death of the wife. If, therefore, advances are made during B.'s life, and after A.'s death, Account Stamp Duty is due thereon when made, for the property then passes to the child advanced under a voluntary settlement made by a person who has died after June 1, 1881, and whereby an interest in such property for life was reserved to the settlor. A deduction may be taken of the value of B.'s life interest in the sums advanced.

(*c*) Where the reversioners sell their reversions and the parties desire to pay at once the Account Stamp Duty payable on the death of the settlor tenant for life, a deduction can be taken of the life interest of such tenant for life; but as such payment by anticipation is in the nature of a bargain to accommodate the parties no return of the Account Stamp Duty will be allowed in the event of the tenant for life surrendering his life interest.

(*d*) Where the husband reserves the first life interest and dies first, then, on his death, the Account Stamp Duty is immediately payable, although by the wife taking the second life interest the capital does not "pass" in possession to the children until her death, or until it is advanced to them in her lifetime. The claim for duty is fixed by the husband's death.

(*e*) Where the mortgagees of the life interest of a settlor tenant for life under a voluntary settlement sell their life interest to the reversioners, and the latter call upon the trustees to transfer to them the capital, no Account Stamp Duty is claimed, as there has been no death.

The future death of the voluntary settlor cannot relate back to the date when the trustees, at the request of the reversioners, transferred the capital to them. If the reversioners do not require the capital to be transferred to them, still they have the whole equitable interest, and no Account Stamp Duty is claimed.

(*f*) Where a voluntary settlor does not reserve any interest for life, or other period determinable by reference to death, but does reserve the right by the exercise of a power to restore to himself or to reclaim the absolute interest in such property, then, on his death, Account Stamp Duty is chargeable, although the beneficiaries are already in enjoyment of the

ADVANCEMENT and ADVANCES—*continued.*

income of the property settled. The settlor's death has removed the possibility of their interest being divested by the exercise of the settlor's power. It then passes to them absolutely.

2. An ADVANCE, on account, of share of settled property, made in the exercise of a power in the settlement, is an acceleration and not a defeasance of the succession, and duty (unless commuted, s. 41) is payable at the same time and in the same manner as if no such acceleration had taken place (s. 15 of 16 & 17 Vict. c. 51).

3. ADVANCEMENT.

To the doctrine of resulting trusts there is a very important exception, for in equity, where a purchase is made in the name of a wife or child, or of an illegitimate child, grandchild, or nephew of a wife, to whom the purchaser has placed himself **in loco parentis**, there will *primâ facie* be no resulting trust for such purchaser, but, on the contrary, a presumption arises that an advancement was intended, pursuant to the obligation to provide for such relations. And a purchase by a parent in the joint names of himself and his child, as well as a purchase in the joint names of his child and a stranger, will be held an advancement for the child to the extent of the interest vested in him; the stranger, however, holding the estate vested in him in trust for the parent.

See also "Gifts Inter Vivos;" "Joint Investment."

ADVOWSON

Is the perpetual right of presentation to a benefice, and descends to the heir as real estate. It is either *appendant*, *i.e.* annexed to some corporeal hereditament, *e.g.* a manor, by the grant whereof it passes, or *in gross*, *i.e.* belonging to an individual and not so annexed.

Liable to Succession Duty when it, or some right of presentation, or some interest in it, is sold, s. 24 of 16 & 17 Vict. c. 51, which enacts that a successor shall not be chargeable with duty in respect of any advowson or church patronage comprised in his succession, unless the same, or some right of presentation, or some other interest in or out of such advowson or church patronage, shall be disposed of by or in concert with him for money or money's worth, in which case he shall be chargeable with duty upon the amount or value of the money or money's worth for which the same, or any such presentation or interest, shall be so disposed of at the time of such disposal.

The next presentation is merely the right to present upon the vacancy which occurs after the grant, and is personal estate, and where a right to present has accrued, and the owner dies without presenting, the right will devolve upon his personal representatives.

The gift of the next presentation is a legacy out of real estate (45 Geo. 3, c. 28, ss. 4 and 5), see "Next presentation."

A., in whom several advowsons were vested at the passing of the Irish Church Act, applied for and obtained compensation in respect thereof.

Held, not to have been "disposed of" by the defendant, but to have been taken from him by the Irish Church Act, and therefore Succession Duty was not payable in respect of the compensation (**Attorney-General** *v.* **Lord Leconfield**, 2 Ir. L. R. 290).

Estate Duty

Is not payable in respect of any advowson or church patronage which would have been free from Succession Duty under s. 24 of the Succession Duty Act (*supra*) (Finance Act, 1894, s. 15 (4)).

AFFIDAVIT.

Probate Duty and Temporary Estate Duty.

55 Geo. 3, c. 184, s. 38, first introduced affidavit of value; but it was only necessary that it should show that the estate and effects of the deceased "are under the value of a certain sum to be therein specified," without going into particulars.

43 Vict. c. 14, s. 10 (1), required an account of the particulars and value of the estate to accompany affidavit of value.

44 Vict. c. 12, s. 27, transferred the stamp from the grant to the affidavit of value.

44 Vict. c. 12, s. 29, required the affidavit to extend to the VERIFICATION of such account of the estate and effects, and of the schedule of debts and funeral expenses, and to be in a prescribed form.

52 Vict. c. 7, s. 5 (1) required, where the estate and effects exceeded £10,000, the affidavit to be accompanied by a STATEMENT (Form "E") of the value of deceased's personal estate and effects.

The affidavit should, generally speaking, be made by the person applying for the grant, but the Court may in their discretion receive it, though made by some other "competent person" (55 Geo. 3, c. 184, s. 38).

Affidavits may be made abroad before any British ambassador, minister, *chargé d'affaires*, secretary of embassy or legation, British consul or consular agent (18 & 19 Vict. c. 42, s. 1).

Affidavit of Value.

(*a*) AFFIDAVIT OF APPLICANT NOT CONCLUSIVE.—In granting probate or letters of administration, the Court is not restricted to the oath of the applicant as to the value of the property, but may receive the oath of any competent person to that fact (*In Goods of De Angulo y Urruela*, L. R. 1 P. 598).

(*b*) WHERE EXECUTORS SWEAR UNDER DIFFERENT SUMS.—A testator died leaving executors A. and B. A. proved the will and swore the property (the amount of which depended on the result of a Chancery suit then pending) to be under a certain sum, and paid duty accordingly. B. was allowed to take probate, swearing the property under a smaller sum (*In Goods of Bell*, L. R. 2 P. 247).

Estate Duty (Finance Act, 1894).

The expression "Inland Revenue Affidavit" means an affidavit made under the enactments specified in the second schedule to the Act with the account and schedule annexed thereto (22 (1 n.)), that is (in England and Ireland) the affidavit leading to the grant, or (in Scotland) the inventory leading to confirmation (s. 23 (5)).

All original Estate Duty Affidavits (other than those bearing 30s. or 50s. adhesive stamps) should be transmitted, with the duty, either directly to the Accountant-General of Inland Revenue, Somerset House, or tendered to any collector of Inland Revenue in the provinces.

The following are the towns in which such collections are situated :—

Bangor.	Cambridge.	Hull.
Bath.	Canterbury.	Ipswich.
Birmingham.	Cardiff.	Lancaster.
Bolton.	Carlisle.	Leeds.
Bradford.	Chester.	Leicester.
Brighton.	Derby.	Lincoln.
Bristol.	Exeter.	Liverpool.
Burton-on-Trent.	Hereford.	Maidstone.

AFFIDAVIT—*continued.*

Manchester.	Plymouth.	Sunderland.
Newcastle-on-Tyne	Portsmouth.	Swansea.
Northampton.	Reading.	Warrington.
Norwich.	Sheffield.	Wolverhampton.
Nottingham.	Shrewsbury.	Worcester.
Oldham.	Southampton.	York.
Oxford.	Stourbridge.	

When the duty payable is transmitted to the Accountant-General it should be remitted either—

(*a*) by cheque drawn in favour of the Commissioner of Inland Revenue or order, and crossed "Bank of England."

(*b*) by a post office money order, which, provided that the amount to be transmitted does not exceed £50, can be obtained, free of cost, at any money order office.

As to Additional or Corrective Affidavit, see "Rectification of Duty."

As to forms of affidavit, see "Forms."

As to stamp on affidavit, whether adhesive or impressed, see "Adhesive Stamps."

The 54 & 55 Vict. c. 39, exempts from Stamp Duty "any affidavit or declaration made upon a requisition of the Commissioners of any public board of revenue, or any of the officers acting under them."

AFFIRMATION.

Quakers and persons alleging conscientious scruples (17 & 18 Vict. c. 125, s. 20), may affirm instead of taking an oath (7 & 8 Will. 3, c. 34; 9 Geo. 4, c. 32; 3 & 4 Will. 4, c. 49; 1 & 2 Vict. c. 77).

AFTER-ACQUIRED PROPERTY, Covenant to settle. See "Covenant."

AGE.

A person comes of age the day preceding the twenty-first anniversary of his birth, for in the computation of time the law, in general, allows no fraction of a day (2 St. Com. 1 Jarm. Wills).

AGENT and AGENT'S CHARGES.

No deduction thereof can be taken for, as against Succession Duty (*In re Elwes*, 3 H. & N. 719).

An agent or bailiff, managing the property of another, is not accountable for Estate Duty (Finance Act, 1894, s. 8 (4)).

AGGREGATION.

For determining the rate of Estate Duty to be paid on any property passing on the death of the deceased, all property so passing in respect of which Estate Duty is leviable shall be **aggregated** so as to form **one estate**, and the duty shall be levied at the proper graduated rate on the principal value thereof (s. 4 of Finance Act, 1894).

"Property passing on any death shall **not be aggregated more than once**, nor shall Estate Duty in respect thereof be more than once levied on the same death" (s. 7 (10)).

Exceptions.

1. Provided that any property so passing, in which the deceased never had an interest, or which under a **disposition not made by the deceased** passes immediately on the death of the deceased to some person **other than the**

AGGREGATION—*continued.*

wife or husband or a lineal ancestor or lineal descendant of the deceased, shall not be aggregated with any other property, but shall be an estate by itself, and the Estate Duty shall be levied at the proper graduated rate on the principal value thereof; but if any benefit under a disposition not made by the deceased, is reserved or given to the wife or husband, or a lineal ancestor or lineal descendant of the deceased, such benefit shall be aggregated with property of the deceased for the purpose of determining the rate of Estate Duty (s. 4 of Finance Act, 1894).

2. Where the net value of the property, real and personal, in respect of which Estate Duty is payable on the death of the deceased, exclusive of property settled otherwise than by the Will of the deceased, does not exceed £1000, such property, for the purpose of Estate Duty, **shall not be aggregated** with any other property, but shall form an estate by itself (s. 16 (3)).

3. It shall be lawful for the Treasury to remit the Estate Duty, or any other duty leviable on or with reference to death, in respect of any such pictures, prints, books, manuscripts, works of art or scientific collections as appear to the Treasury to be of national, scientific, or historic interest, and to be given or bequeathed for national purposes, or to any university, or to any county council or municipal corporation, and **no property, the duty in respect of which is so remitted, shall be aggregated** with any other property for the purpose of fixing the rate of Estate Duty (s. 15 (2)).

4. Where any property passing on the death of a deceased person consists of such pictures, prints, books, manuscripts, works of art, scientific collections or other things not yielding income as appear to the Treasury to be of national, scientific, or historic interest, and is settled so as to be enjoyed in kind in succession by different persons, **such property shall not,** on the death of such deceased person, **be aggregated** with other property, but shall form an estate by itself (s. 20 (1), Finance Act, 1896).

5. Estate Duty is not payable under a disposition which took effect before 2nd August, 1894, upon property passing on the death of the person dying after 1st August, 1894, where the deceased was entitled either solely or jointly with his or her surviving wife or husband to the income of said property settled by the survivor, and to which income on the death of the deceased the survivor becomes entitled; and in practice such property is **not aggregated** on the death of the deceased (s. 21 (5), Finance Act, 1894).

6. There is **no aggregation** of property if the Estate Duty is "not leviable" thereon, although the property passes.

Examples.

1. A. has an estate for the life of B. in Whiteacre.
   B. dies after August 1, 1894. The value of Whiteacre is not aggregated with the rest of B.'s estate, although passing **immediately** to his "family" (*a*), but is treated as an "estate by itself."

2. Deceased's free estate amounts to £130 (net); real estate £60; personal estate £70. Duty is assessed on £100 (the adjusted value of £130), viz. personal estate £100, real estate *nil*. See "Fractions, £100." Where the real estate is, say, £60, and the personal estate, say, £950, total £1010 (£1000), the free estate is potentially liable to Legacy, Succession, and Settlement Estate Duty, although the rate of

(*a*) That is, wife, husband, lineal ancestor or lineal descendant.

AGGREGATION—*continued.*

Estate Duty is only 2 per cent., and the property as a whole forms an "estate by itself" (s. 16 (3)). See further, "Small Estates."

3. Where A. leaves **free** real and personal estate, and where A. is tenant-for-life of a fund **of which he is the settlor,** it is immaterial in either case (*a*) to what class of people (lineals, collaterals, or strangers) the fund passes, so far as the question of aggregation is concerned, for in either case it passes under a "disposition made by the deceased" (s. 4).

4. Where A. is a tenant-for-life of a fund which on his death passes (*a*) to a collateral for life, remainder to a member of A.'s "family," (*b*) to a member of A.'s family for life, remainder to a collateral, then in (*a*) the fund is an "estate by itself" as it passes on A.'s death **immediately** out of the family, and in (*b*) the fund is aggregable with A.'s free estate, if the latter is not an estate by itself.

5. Where "A" represents an estate by itself, "B" another estate by itself, "A" and "B" are not aggregable *inter se.*

6. i. A.'s free estate (real and personal) is £450 (net).
   ii. His severable share of property held in joint tenancy is of the value of £400.
   iii. He made *inter vivos* gifts (within twelve months of his death) to the amount of £270. ii. and iii. are not in practice treated as "property settled otherwise than by the will of the deceased," and Estate Duty is payable at the rate of 3 per cent. on the aggregate, £1120 (£1100).

7. A.'s free estate or property (P) exceeds £1000.
   A. is a simple tenant-for-life (but not settlor) of a fund passing by his death as to part (L) to lineals, as to the remainder (C) to collaterals.
   A. is also a simple tenant-for-life, under the will of X., of realty (R), English personalty (E), and Foreign personalty (F) which pass to his "family."
   A. is also a simple tenant-for-life of a fund (S.) which has paid Account Stamp Duty on the death of a previous tenant-for-life.
   The aggregable funds are P + L + R + F.
   C. is an estate by itself (s. 4, proviso).
   E. and S. are each exempt (s. 21 (1)). See "Exemptions."
   A. is also a tenant-for-life, with a general power of appointment, of a fund (G) passing under a will or deed. This fund pays Estate Duty on A.'s death, although Probate Duty, or Account Stamp Duty, or Estate Duty has already been paid under the will or deed, because A. was "competent to dispose" (*q.v.*) thereof.
   Where A. exercises the power by will, the fund forms part of his free estate (P). If not exercised, then if it passes in default to A.'s family, "G" is aggregable, but being "settled otherwise than by the will of the deceased," although it can be aggregated with L, R, F, it cannot be aggregated with deceased's free property (P), when P does not exceed £1000 (s. 16 (3)).
   Where the power is not exercised and the fund passes out of the

(*a*) But the free estate [or rather property other than that settled otherwise than by the will of the deceased] must, of course, exceed £1000 to be aggregable (s. 16 (3)).

AGGREGATION—*continued.*

"family," G will form an estate by itself. The Estate Duty being payable out of the fund passing in default of appointment (s. 9 (1)). Moreover, when the power is not exercised the payment of Estate Duty being under the "disposition" conferring the life interest, the fund is exempted from liability thereunder to any of the duties specified in Schedule I. of the Finance Act, 1894.

8. A. is a simple tenant-for-life (and not settlor) of entailed real estate, which passes on his death (on failure of issue) to his brother (B.) in tail.

A. exercises by will the power to jointure his wife (W.) conferred by the settlement. The jointure which is "a benefit reserved or given to the wife . . . of the deceased . . . shall be aggregated with property of the deceased for the purpose of determining the rate of Estate Duty" (s. 4, proviso).

The real estate is an "estate by itself." The jointure, however, is reserved out of this "estate by itself," and pays the rate of Estate Duty attributable thereto, the duty on the whole being, however, payable by the owner B., who can, under s. 9 (1), recover the appropriate rateable part, attributable to the jointure, from W.

9. A.'s free estate in possession is £900.

The value of an interest in expectancy is—

i. At the death, £150.

ii. When it falls into possession, £300.

The free estate in possession pays a rate of 2 per cent. (£1050, £1000); the interest in expectancy, a rate of 2 per cent. if the payment is not deferred; or a rate of 3 per cent. [£900 + £300], when it falls into possession on the death of the tenant-for-life.

See further, "Interests in Expectancy."

AGRICULTURAL PROPERTY.

1. *Estate Duty.*

S. 7 (5) of the Finance Act, 1894, provides that, "in the case of any **agricultural property**, where no part of the principal value is due to the expectation of an increased income from such property, the principal value shall not exceed twenty-five times the annual value as assessed under Schedule A of the Income Tax Acts, after making such deductions as have not been allowed in that assessment, and are allowed under the Succession Duty Act, 1853 (16 & 17 Vict. c. 51), and making a deduction for expenses of management not exceeding 5 per cent. of the annual value so assessed."

Where, however, the principal value of "agricultural property" is affected by a prospective increased income, its principal value "shall be estimated to be the price which, in the opinion of the Commissioners, such property would fetch if sold in the open market at the time of the death of the deceased." Where "agricultural property" whose value is determined by the above proviso, has been sold for more than twenty-five years' purchase, then the value is fixed at twenty-five years' purchase only; where, however, it was estimated at (say) twenty-two years' purchase and sold for (say) twenty-four or twenty-five years' purchase the higher value (so long, in fact, as it is within the prescribed limit) would be treated as the principal value.

AGRICULTURAL PROPERTY—*continued.*

2. *Succession Duty.*

". . . in the case of any agricultural property where no part of the principal value is due to the expectation of an increased income from such property, the annual value for the purpose of Succession Duty shall be arrived at in the same manner as under the provisions of this part of this Act for the purpose of Estate Duty" (s. 18 (2)).

Definition of "Agricultural Property," s. 22 (1. *g.*).

(*g*) The expression "agricultural property" means agricultural land, pasture and woodland, and also includes such cottages, farm buildings, farm houses, and mansion houses (together with the lands occupied therewith) as are of a character appropriate to the property.

See also "Annual Value," "Deductions."

ALIEN.

The Naturalization Act of 1870 (33 Vict. c. 14), provides that real and personal estate of every description, except a share in a British ship, may be taken, acquired, held, and disposed of by an ALIEN, in the same manner in all respects as by a natural-born British subject; and a title to real and personal property of every description may be derived through, from, or in succession to an ALIEN in the same manner in all respects as through, from, or in succession to a natural-born British subject (ss. 2, 14).

ALIENEE and ALIENATION.

Estate Duty :—

Every person, whether a *bonâ fide* purchaser for valuable consideration with notice, or a volunteer, in whom the same is vested in possession by alienation before the deceased's death, or by other derivative title, is accountable for Estate Duty on the property passing on the deceased's death, and must deliver to the Commissioners and verify an Account, to the best of his knowledge and belief, of the property (Finance Act, 1894, s. 8 (4)).

As to the case where lands or chattels are so settled that none of the persons successively entitled in possession is capable of alienating the same, see "Chattels," and s. 5 (5) of Finance Act, 1894.

Succession Duty (16 & 17 Vict. c. 51) :—

1. **Trustees of a Settlement, Successors as Alienees.**

A. absolutely entitled to a reversionary interest in personalty, settled it upon the usual trusts of a marriage settlement, and, on the reversion falling in, paid the whole of the Succession Duty which had become payable thereon out of his own moneys.

Held, that having regard to s. 32 he was entitled to be recouped out of the *corpus* of the settled fund (*Cuddon* v. *Cuddon*, L. R. 4 Ch. D. 583).

2. **Company, Successor as Alienee.**

A. (*ob.* 1841) devised real estate to B. (*ob.* 1872) for life, remainder on B.'s death without issue to C. (*ob.* 1870) in fee.

C., prior to his death, sold his reversion in fee to the Law Reversionary Interest Society. On B.'s death without issue duty was held to be payable at the same rate and time as if C. had succeeded and had to pay duty, but on the PRINCIPAL VALUE, as in the case of a body corporate (*Solicitor-General* v. *Law Reversionary Interest Society*, L. R. 8 Ex. 233).

ALIENEE and ALIENATION—*continued.*

3. **Purchaser of Expectant Succession.**

As between a vendor and purchaser of a reversion (an expectant succession) the purchaser is liable to pay the Succession Duty (*Cooper* v. *Trewby*, 8 W. R. 299, 28 Beav. 194).

4. **Devolution of Reversionary Interest.**

C. died in 1844, entitled to a reversionary interest in real estate expectantly on the death of B. (*ob.* 1859) under the will of A., and left D. his heir-at-law, D. was held to succeed as ALIENEE of C., and to take his succession as derived from A. under his will. (This rule, however, is no longer followed in official practice, and D., in such a case, is now held to take his succession as derived from his immediate ancestor, C.) (*Attorney-General* v. *Rushton*, 2 H. & C. 812).

5. **Alienation of Old Succession, and New Succession.**

A. (tenant for life) and B. (reversioner in fee) mortgaged their respective interests to the same persons.

The power of sale in the mortgage deeds was exercised and the transferee (C.) of the mortgages became absolutely entitled, and devised the estates to D. for life, who entered into possession and paid duty, deriving his title from C. as predecessor. The trustees of C. then sold to E., who took exception to the title on the ground that Succession Duty was payable also in respect of B.'s succession on the death of A.

Held, that C. was alienee of B. under a title not conferring a **new succession** (*q.v.*), but that as C. had created a new succession, in respect of which D. had paid the full duty, no further claim for duty arose on the death of A. (*Cooper and Allen, In re*, 4 Ch. D. 802, 25 W. R. 301). See, however, "Wolverton Case;" also "Reversionary Interests, alienation of;" "Purchaser."

ALLOT, power to.

Where real estate is devised in trust to sell all or part thereof with discretionary power to defer sale, and to have any part valued instead of being sold, and of ALLOTTING such parts to any or either of testator's children at the amount of the valuation, then the property sold is liable to Legacy Duty (but see 51 Vict. c. 8, s. 21, Appendix), but not the part valued (*Attorney-General* v. *Mangles*, 5 M. & W. 120).

ALLOWANCES. See "Deductions."

AMBASSADOR, British.

Empowered to administer oaths and do notarial acts, as are other British ministers abroad by 18 & 19 Vict. c. 42, and British consuls by 6 Geo. 4. c. 87.

AMERICAN RAILWAY SHARES and STAMP DUTY.

Where certificates of American Railway Shares are in the United Kingdom at the death of the owner, and each certificate has endorsed on it a form of transfer and power of Attorney in blank, this endorsed transfer having been duly executed by the registered owner, the name of the transferee being left blank; then the delivery of the certificates by the holder of them entitled to the beneficial interest, whether the registered owner or not, or by his authority with intent to transfer, transmits his title to the shares both legal and equitable. These certificates are securities negotiable in the United Kingdom, and are commonly dealt with on the London Stock Exchange (*Stern* v. *Reg.* (1896), 1 Q. B. 211).

AMOUNT, on which duty payable. See "Payment."

ANCESTORS.

First charged with Legacy Duty by 55 Geo. 3, c. 184.

Included in the term "predecessor," s. 2 of 16 & 17 Vict. c. 51.

Exempt from Legacy Duty (1 per cent.) and Succession Duty (1 per cent. and 1½ per cent.) in respect of personal property on which STAMP DUTY has been paid where grant taken out on or after June 1, 1881 (44 Vict. c. 12, s. 41); or on property (real or personal, free or settled) on which Estate Duty has been paid (Finance Act, 1894, s. 1).

ANCESTRAL MORTGAGE.

The mortgaged estate was always, in the case of ancestral mortgages, the primary fund, for the payment of the mortgage unless the ancestor or devisor had adopted the debt as his own personal debt. And now the effect of Locke King's Act (*q.v.*) is to treat every mortgage as if it were an ancestral mortgage, unless a contrary intention is expressed. It is immaterial, where the deceased acquired property burdened with a mortgage, whether the debt was or was not created for "full consideration in money or money's worth." The debt can be deducted from the property in question as against Estate Duty (Finance Act, 1894, s. 7); or Probate Duty (with respect to leaseholds). And also in Fixed Duty Cases, as regards either Duty.

ANIMAL, Gift to or in trust for.

Having regard to the judgment of North, J., in *In re Dean, Cooper Dean* v. *Stephens* (41 Ch. D. 552), legacies or annuities given to any person or persons for the purpose of maintaining animals are treated as held in trust for the animals to the extent of the cost of their maintenance, and, so far, as not liable to duty; and in trust for the residuary legatees and devisees to the extent of what remains beyond the cost of such maintenance: provided (1) That where these gifts are manifestly to persons beneficially, with the mere condition of maintaining the animals; or (2) That the knowledge that these persons would maintain the animals was the motive for the gift, then duty is claimed on the legacies or annuities as absolute gifts to these persons without regard to the maintenance of the animals.

ANNUAL VALUE.

1. **Succession Duty.**

A successor's interest in "real property," except as otherwise provided, is for the purposes of the Succession Duty Act to be considered to be of the value of an annuity equal to the (net) annual value of the property. See s. 21 of 16 & 17 Vict. c. 51.

The value of property for the purposes of Succession Duty is to be ascertained at the time when the successor becomes entitled in possession, and if such property has then no actual or potential annual value, it is not chargeable with duty (*a*). Neither possible increase nor diminution in the value of the property after the succession accrues is dealt with by the Act. It would appear, however, that although the land at the time of the succession is incapable, in its then existing state, of yielding any annual income, yet if it is saleable, then such property has an annual value, viz. a value equal

(*a*) "The decision in this case proceeded on the express admission in the information that the land in question was not capable of yielding income, fluctuating or otherwise" (Hanson, 3rd ed., p. 303).

ANNUAL VALUE—*continued.*

to 3 per cent. on the saleable value of the property at the time of the succession (*a*) (*Attorney-General* v. *Sefton*, 2 Hurlst. & Colt. 362, 11 Ho. Lds. Cas. 257).

There may be an ASSESSABLE annual value, although the property may not produce any actual present income.

In this case it was held that Succession Duty was payable on the annual value of shootings, though unlet and yielding no income (*Lord-Advocate* v. *Duke of Buccleuch*, 25 Sco. L. R. 249).

Note that where the property passes on a death after 1 August, 1894, then if the successor is "competent to dispose" (*q.v.*) of the property Succession Duty is not based on the "annual value" of the property, but upon the principal value.

Where, however, this property is "agricultural property" (*q.v.*) where no part of the principal value is due to the expectation of an increased income from such property the maximum principal value is based upon "an annual value."

It (the principal value) "shall not exceed twenty-five times **the annual value** as assessed under Schedule A of the Income Tax Acts, after making such deductions as have not been allowed in that assessment and are allowed under the Succession Duty Act, 1853, and making a deduction for expenses of management not exceeding 5 per cent." (Finance Act, 1894, s. 7 (5)).

And it would appear that agricultural property is for all Succession Duty purposes to be calculated after taking into account the said deductions (s. 18 (2)).

2. **Estate Duty.**

Where Estate Duty is chargeable upon "agricultural property" the principal value is similarly arrived at.

In both cases of Succession Duty and Estate Duty, the gross (and not the reduced) assessment is taken as the "annual value as assessed under Schedule A of the Income Tax Acts."

ANNUITY.

I. Legacy and Succession Duty.

1. A gift of an annuity is a "legacy" for the purposes of the Legacy Duty Acts, (s. 4 of 8 & 9 Vict. c. 76). A gift to devisee during minority of a portion of the rents of the real estate devised to him will not constitute a "legacy" under this Act, but is liable to Succession Duty under 16 & 17 Vict. c. 51 (*Shirley* v. *Earl of Ferrers*, 1 Ph. 167; see also *Re De Hoghton* (1895), 2 Ch. 517; 74 L. T. 297).

2. Annuities under the Succession Duty Act and the Legacy Duty Acts are to be valued according to the Tables I., II., III., annexed to the Succession Duty (16 & 17 Vict. c. 51, s. 31).

See *In re Lord Cornwallis* (25 L. J. R. (Exch.) 149; 11 Exch. Rep. 580), which decided that the value of an annuity must be calculated according to the

(*a*) "There may be successions which at the time of accruer neither yield nor are capable of yielding in their existing state any annual income, but yet are saleable, and would fetch in the market considerable sums; and in such cases I incline to think that the property which formed the succession (not being excepted from the operation of the Act, which is the case with unopened mines, timber, and advowsons), has an annual value within the meaning of the Act, namely, a value equal to interest at 3 per cent. on the sum that might have been realised if the property had been sold at the time of the accruing of the succession, and that the successor cannot baffle the statute by postponing the sale until a future period," *per* Lord Westbury, in this case.

ANNUITY—*continued.*

tables in use at the time the annuity became payable, and not when the duty is actually paid.

The duty on annuities is payable by FOUR equal yearly instalments, or in one sum subject to discount, at the option of the parties, and where the annuity determines by the death of the annuitant before four years' payment of such annuity shall become due and payable, the duty shall be payable in proportion only to so many of the payments of the said annuity as actually accrued and became payable.

As to return of overpaid duty, see "Rectification of Duty." Where testator died on or after July 1, 1888, annuities charged on real estate, or the proceeds of real estate, are chargeable with duty as if "Successions to Personalty" (51 Vict. c. 8, s. 21), but are still "legacies," and all the laws incidental to legacies attach to them.

3. The extinction of an annuity charged on "real property" confers a succession; the person "then entitled beneficially to the property or the income thereof," being the "successor," the "predecessor" being the person from whom the "successor" derives title (s. 5 of 16 & 17 Vict. c. 51).

Where, however, the owner of the "real property" so charged has devised it to be sold (or where he has authorized the devisee to purchase a government annuity in lieu of the charge), the extinction of the annuity will create no claim for Succession Duty under his will, whether the purchase be made subject to the charge or freed therefrom; but where sold (by the owner, **the annuitant joining**) free from the annuity Legacy Duty would be payable on the fund (set apart to provide for the annuity) on the death of the annuitant. Where sold under a power, the annuitant concurring, the duty would appear to shift to the proceeds or the property charged therewith (*Dugdale* v. *Meadows*, L. R. 9 Eq. 212; 6 Ch. App. 501).

If, however, in such a case the purchaser buys the property subject to the annuity, no duty is payable by him on the extinction of the annuity in respect of the increase of benefit thereby accruing; but where he buys subject to the annuity and predeceases the annuitant the subsequent extinction of the annuity may render further duty payable under his will (s. 5).

Real Estate (subject to an annuity to A.) is devised to B. and C. as joint tenants. B. and C. agree to a partition, B. undertaking to pay the whole annuity. B. pays Succession Duty on A.'s death, as to one-half at his own rate, as to the other half (*quâ* alienee of C.) at C.'s rate (s. 15).

4. In estimating the value of a tenant-in-tail's succession, a deduction can be taken under s. 38 of an annuity created by the tenant for life and tenant-in-tail under a resettlement in favour of the tenant-in-tail (*Lord Braybrooke* v. *Attorney-General*, 9 Ho. Lds. Cas. 150. But see 52 Vict. c. 7, s. 10 (1).

5. Where an annuity is charged by will on personal estate it is usual to take a deduction of the value thereof in the Residuary Account (Form No. 3), and when so taken, no further duty is payable thereon on the death of the annuitant.

In the event, however, of the annuitant dying before all the instalments have become due, and a claim for a return of overpaid duty (the same having been paid in full in advance) is made (s. 40 of 16 & 17 Vict. c. 51), further duty will be payable in respect of the excess of the sum deducted in the account over the value of the annuity for the term for which it shall have endured.

6. An annuity which a deceased person was under a legal obligation to pay is a debt due from his estate, and a deduction of the value as ascertained according to

ANNUITY—*continued.*

the tables annexed to the 16 & 17 Vict. c. 51, may be taken as against Probate or Estate Duty [provided as regards Estate Duty the debt was incurred or created *bonâ fide* for full consideration in money or money's worth]. See s. 28 of 44 Vict. c. 12 (Appendix). Finance Act, 1894, s. 7 (1 *a*).

7. *Typical examples illustrating the incidence of Legacy (and Succession) Duty on gifts by way of annuity.*

(*a*) ANNUITY OF £250 TO A. (AGED 56) FOR LIFE.—Duty is assessed on the value of the annuity for A.'s life (Table I.) (*a*). Where the annuity is directed to be purchased, duty is payable on the said value, but in one sum, as in the case of an absolute bequest, and not by instalments. The amount to be deducted in the residuary account is the sum actually expended. If the rate of duty be 3 per cent., the annuity to be purchased by the executor is 97 per cent. of £250, unless the gift is free of duty, when, of course, the whole annuity is to be purchased.

As to the case where a specified sum is directed to be invested in the purchase of an annuity, see "Legacy Duty," "Absolute Bequests." Where the said annuity is directed to be paid out of the rent of a leasehold house having a short unexpired term (say 10 years), the value will be calculated as in Example (*d*) (*infra*), by means of Tables III., I., and II.

Annuities commence from the testator's death, except an earlier period is directed by the will (*Houghton* v. *Franklin*, 1 S. & St. 390). Where there is a direction to invest a sum of money to produce the annuity, it would appear that the annuity begins to run from twelve months after the death, or from the date of investment if prior thereto (*Gibson* v. *Bott*, 7 Ves. 89). See also *Whittaker* v. *Whittaker* (L. R. 21 Ch. D. 657). As to annuity out of residue, see *Storer* v. *Prestage* (3 Madd. 168).

Where the annuitant and the residuary legatee are liable to the same rate of duty, s. 12 of 36 Geo. 3, c. 52 does not apply, and duty is still payable upon the value of the life-interest (*Crow* v. *Robinson*, 10 W. R. 306. In practice, however, duty is generally tendered on the *corpus* of the fund, as if s. 12 were applicable.

(*b*) ANNUITY OF £200—

(*a*) To B. for life or till remarriage.

(*b*) To C. for life to be reduced to £100 a year on remarriage.

These are examples of an annuity subject to a contingency (s. 17). In each case the value of the annuitant's life-interest is ascertained by Table I. without regard to the contingency of the remarriage. Should the contingency happen the overpaid duty will be returned on application being made. See "Rectification of Duty."

Where an annuity is given to D. in trust to maintain a pony (or some other animal). See "Animal, Gift in trust for."

(*c*) ANNUITY OF £100 TO E. (AGED 10) UNTIL HE ATTAINS 21.—The value of an annuity of £100 for eleven years certain is ascertained by Table III. The life (sixty-three) is found whose value (Table I.) for an annuity of £100 corresponds the nearest to this value. Then by Table II. find the value of an annuity of £100 for the joint continuance of the lives ten and sixty-three. Or find by Table III. the value of the annuity for eleven years certain. When the assessment, however,

ANNUITY—*continued.*

is made on this basis and the annuitant dies before attaining 21, there would appear to be a claim for a return of overpaid duty.

(*d*) ANNUITY OF £150 TO F. (AGED 48) UNTIL B. (AGED 6) ATTAINS 21.—Find the value of an annuity of £150 for fifteen years certain by Table III. Where, however, the gift is to F. until B. attains 21 should F. so long live, here find the value, as before, for 15 years certain. This corresponds to the value of the annuity by Table I. for a life of thirty-eight. Then find by Table II. the value of the annuity for the joint continuance of the lives forty-eight and thirty-eight.

(*e*) ANNUITY OF £300 TO G. DURING THE LIFE OF E. (AGED 24). Find the value, by Table I., of the annuity for a life of twenty-four.

Should G. predecease E. the value of the annuity for the life of E. (age at death of G.) is a personal asset, and as such liable to Probate (or Estate Duty) and Legacy Duty, and where bequeathed to H., H. pays duty on the value for the joint continuance of his own life and that of E.

(*f*) ANNUITY OF £350 TO A. AND B. DURING THEIR JOINT LIVES, AND ON THE DEATH OF EITHER—

(*a*) To the survivor for life.

(*b*) To C. for life.

In (*a*) duty is assessed on a moiety of the annuity for the life of A., and on a moiety for the life of B.; and on the death of either, on the moiety accruing to the survivor for life as a deferred annuity; or, where it is so desired (and this has been the rule where A. and B. are husband and wife), duty can be assessed on the longer of the two lives (formula: A. + B. — A.B.) according to the RULES annexed to the 16 & 17 Vict. c. 51 (*a*).

In (*b*) duty is assessed on the joint lives of A. and B. (Table II.), and on the death of either on the life of C. (Table I.).

(*g*) ANNUITY OF £400 TO M. AND N. (HUSBAND AND WIFE) DURING THEIR JOINT LIVES AND ON THE DEATH OF EITHER TO THE SURVIVOR FOR LIFE.—Here it has been the practice to assess the duty on the longer of the two lives, M. and N. being held to take as tenants by entireties. A limitation to husband and wife will, however, under the Married Women's Property Act, 1882, make them joint tenants or tenants in common, according to the term of the limitation (*In re March, Mander* v. *Harris*, 27 Ch. D. 166; 32 W. R. 941).

(*h*) ANNUITY OF £450 TO O., P. (HUSBAND AND WIFE), AND Q., ON SIMILAR TRUSTS TO THOSE IN EXAMPLE (*g*).—Here O. and P. are held to take one moiety, Q. taking the other moiety, duty being assessed on the first moiety as in example (*g*). Any indication, however slight, of testator's intention that each shall take separately, has been held to defeat the application of the above construction (*Byram* v. *Tull*, 42 L. R. Ch. D. 306, which followed *Warrington* v. *Warrington*, 2 Hare, 54).

(*i*) ANNUITY OF £200 TO S. AND HIS HEIRS CHARGEABLE ON TESTATOR'S ESTATE OF DALE.—This is an example of a RENT-CHARGE.

Duty is assessed on the value of the annuity as an annuity in perpetuity.

(*a*) Add the values of the annuity (Table I.) for each of the single lives (A. B.), and from the sum deduct the value (Table II.) for the joint continuance of the two lives.

ANNUITY—*continued.*

i.e. for ninety-five years certain (Table III.). The gift is liable to duty as a LEGACY (**Attorney-General** *v.* **Jackson,** 2 C. & J. 101; 2 Tyr. 50) to the first taker (where testator died before July 1, 1888) or is taxable as if a SUCCESSION by him to personalty (where testator died on or after said date)—the duty thereon in either case being payable by instalments. As, however, such RENT-CHARGE is in fact REAL ESTATE it will, in either case, on the death of the first taker, be chargeable with duty as a succession in the hands of his heir or devisee, who will be chargeable with duty on the value of his life-interest (s. 21 of 16 & 17 Vict. c. 51).

(*j*) ANY ANNUAL SUM (not exceeding £200) which successive tenants-for-life entitled in possession to testator's mansion-house, premises, and grounds, and in the parish of Rusper (devised to T. for life remainder to his first and other sons successively in tail male) are empowered to charge thereon by way of JOINTURE in favour of their respective widows.

Duty is payable in respect of said annual sums WHEN CHARGED on the value of the interest of the respective widows for life, or any less period by FOUR equal yearly instalments; or, when charged BY DEED by EIGHT equal half-yearly instalments as in the case of a succession to real property.

Where a testator empowered a tenant-for-life to charge certain estates by deed or will with an annuity in favour of his wife, and he charged such estates with the payment of an annual sum of £2000 to his wife for life in lieu, bar, and satisfaction of her DOWER, which she accepted, it was *held* that such annuity was a LEGACY within s. 4 of 45 Geo. 3, c. 28, and not a purchase for valuable consideration (**Attorney-General** *v.* **Lord Henniker,** 7 Exch. 331; **Lord Henniker** *v.* **Attorney-General,** 8 Exch. 257).

(*k*) £1000 to pay thereout £20 a year to U. for life and subject thereto to V. Here there is no direct gift to U., but a gift to V. charged with the annuity. V. is entitled to the immediate payment of the £1000, and by s. 9 of 36 Geo. 3, c. 52, the liability to pay the duty on the annuity is transferred from the executor to V. the legatee. The same rule applies where residue is given to V. subject to an annuity to U.; not so, however, where the annuity to U. is followed by the gift of the residue to V.

It may be noted that where U. and V. are liable to the same rate of duty, s. 12 of 36 Geo. 3, c. 52, does not apply, and duty is not payable at once on the *corpus* (see Example (*m*)).

(*l*) £2000 to INVEST and pay the income to A. for life, and upon his death to B. for life, and upon his death the principal to C. (but should C. die under twenty-one and without issue to D.).

1. Where A., B., C., and D. are ALL liable to the SAME RATE of duty, duty is charged on the £2000, as in the case of a legacy to one person; the duty being taken at once out of the capital, the tenants-for-life (A. and B.) thereby having a diminished income, and C., or D., a diminished *corpus* (36 Geo. 3, c. 52, s. 12).
2. Where A., B., and C. are not all liable to the same rate of duty,

ANNUITY—*continued.*

A. pays by way of annuity (Table I.), and on his death duty is payable by B., also by way of annuity, unless B. and C. are liable to the SAME RATE, when duty is then payable on the *corpus*.

The tenant-for-life and the trustees who pay him the income are the only persons accountable for the duty on his life-interest, and in the event of such duty not being paid the Revenue has no right to have such duty paid out of the *corpus* going to the remainderman (**Bowra** *v.* **Rhodes,** 10 W. R. 747).

3. Where A., B., and C. are all liable to the SAME RATE of duty, but D. to a DIFFERENT RATE, duty is still payable on the *corpus* by force of s. 17. In the event of D. becoming entitled the duty will be readjusted. See "Rectification of Duty."

"TO INVEST."

The executor having twelve months given him in which to realize the estate and invest the legacy, interest does not begin to be payable until the expiration of one year from testator's death (*Gibson* v. *Bott*, 7 Ves. 96; *Whittaker* v. *Whittaker*, L. R. 21 Ch. D. 657). Duty, therefore, is not payable on the first instalment till the expiration of two years from testator's death, unless the first year's annuity has been previously received by the annuitant (36 Geo. 3, c. 52, s. 8).

(*m*) £800 TO INVEST and pay the income to E. for life or until she shall appoint the same, and in default of appointment to F.

1. If E. & F. are liable to the SAME RATE of duty, s. 12 (*supra*) applies. And where the different persons in succession are liable to the same rate of duty, duty is payable on the capital, although they take the income and capital in different proportions (**Re Greenwood,** 21 L. T. N.S., 25).
2. If to different rates, duty is payable on the value of E.'s life-interest, and on E.'s appointing the same duty is further payable on the £800 less the value of the said life-interest if duty has been paid thereon (36 Geo. 3, c. 52, s. 18; 16 & 17 Vict. c. 51, s. 33).
3. Where the gift over in default of appointment is to E. duty is payable as in the case of an absolute legacy (s. 18, *supra*).
4. Where E. dies without appointing, F. pays duty on the £800 as a deferred legacy.

(*n*) £1000 to invest and pay the income to G. until he attains twenty-one (with power to apply any part of the capital meantime).

Here the value of the benefit to G. can only be ascertained from time to time by the actual application of the allotted fund, duty accordingly is charged upon the several sums applied from time to time for G.'s benefit as separate and distinct legacies, and payable out of the fund applicable for such purpose (s. 11).

(*o*) £15,000 to be laid out in the PURCHASE of real estate in the county of Hants, to be conveyed upon trust to H. for life, remainder to his first and other sons successively in tail male.

Duty is chargeable as on a gift by way of annuity until any person

ANNUITY—*continued.*

becomes entitled to an estate of inheritance in possession in the real estate to be purchased, or until the real estate is purchased (s. 19). The duty is calculated without regard to the contingency, which is not a contingency contemplated by s. 8 as to a return of duty.

(*p*) ANNUITY of £1000 to A., B., and C. during their joint lives, and on the death of either.

(*a*) to M. for life;

(*b*) to the survivors or survivor for life, and on the death of the survivor to N. for life.

(i.) *Formula, CD.* — £5.

Find value for the two elder lives (A. B.) by Table II.

Find a life (D.) whose value (Table I.) for an annuity of £1000 per annum approximates the nearest to this value.

Find the value for the joint lives of C. & D.

From the result deduct £5.

(ii.) *Formula, A. + B. + C.* — (*AB. + BC. + AC.*) + *CD.* — £5.

Find by Table I. the sum of the values for the single lives (A. B. C.).

Deduct from this sum the sum of values (Table II.) for the joint lives (AB. BC. AC.).

Add to the balance the result obtained in (i.).

II. **Estate Duty.**

Estate Duty is leviable on **any annuity** or other interest purchased or provided by the deceased, either by himself alone or in concert or by arrangement with any other person, **to the extent of the beneficial interest accruing or arising** by survivorship or otherwise on the death of the deceased (Finance Act, 1894, s. 2 (1 *d*)).

A. purchases an annuity for the longer of the two lives A. and B. A. survives B.; no Estate Duty thereon on B.'s death. Otherwise where B. contributed. The duty is then payable on the value of the share, [attributable to B.'s contribution] of the annuity for the life of A.

Estate Duty shall not be payable in respect of the **determination of any annuity** for lives, where such annuity was granted, for full consideration in money or money's worth paid to the vendor or grantor for his own use or benefit (s. 3 (1)).

Estate Duty shall not be payable in respect of **a single annuity not exceeding twenty-five pounds** purchased or provided by the deceased, either by himself alone or in concert or arrangement with any other person, for the life of himself and of some other person and the survivor of them, or to arise on his own death in favour of some other person; and if in any case there is more than one such annuity, the **annuity first granted** shall be alone entitled to the exemption under this section (s. 15 (1)).

(i.) A. purchases a life annuity of £10 for B., and subsequently another of £15 for B. or C., both to commence at his (A.'s) death.

(ii.) A. purchases a life annuity of £35 for B., and subsequently another of £20 for B. or C., both to commence at his (A.'s) death.

In (i.) the annuity of £10 is exempt; and in (ii.) that of £20.

Estate Duty shall not be payable in respect of any **pension or annuity** payable

ANNUITY—*continued.*

by the Government of British India to the widow or child of any deceased officer of such Government, notwithstanding that the deceased contributed during his lifetime to any fund out of which such pension or annuity is paid (s. 15 (3)).

1. An annuity, as distinguished from a rent-charge, is a right to a yearly sum not payable as interest, and chargeable only upon the person or personal estate of the grantor or testator by whom it is created; a rent-charge, as distinguished from an annuity, being a right to a yearly sum not payable as interest, and chargeable only on the real estate of the grantor or testator. A rent-charge is, moreover, distinguished from an annuity by the fact that it falls under the statute De Donis, and can be entailed. The rules in Shelley's case apply to the limitations of a rent-charge, as also the other technical rules of construction. A gift of an annuity to be paid out of Real Estate is not specific (*Mann* v. *Copland*, 2 Mad. 223), otherwise where the gift is charged on land with powers of distress (*Long* v. *Short*, 1 P. W. 403).
2. An annuity given out of personalty to A. and his heirs devolves like realty, though for all other purposes personalty (*Earl of Stafford* v. *Buckley*, 2 Ves. sen. 170).
3. An annuity given out of personalty to A. and the heirs of his body gives A. a fee simple conditional.
4. A direction to lay out a specified sum to purchase an annuity, or a direction to purchase a Government annuity of a certain amount vests the sum, or the price or value of the annuity in the annuitant, so that he may elect to take the same instead of the annual payment; and so that his personal representatives will be entitled thereto, though he may die immediately after the testator, and though the annuity is not to be purchased until some time after testator's death, and though the money to purchase the annuity is to be raised by a sale of real estate after the death of a tenant for life who survived the annuitant (*Yates* v. *Compton*, 2 P. Wms. 308; *Barnes* v. *Rowley*, 3 Ves. 305; *Bayley* v. *Bishop*, 9 Ves. 6; *Palmer* v. *Crauford*, 3 Sw. 482; *Dawson* v. *Hearn*, 1 R. & M. 606; *Ford* v. *Batley*, 17 B. 303); and a restraint upon anticipation (except in the case of a married woman), or a declaration that the annuity should cease upon alienation will not take the case out of the rule.
5. Where an annuity, though expressly given to A. for life, is charged upon a fund which fails during A.'s lifetime, the annuity also fails.
6. Where, through insufficiency of assets, legacies and annuities have to abate, the annuitants are entitled (or the representatives of any annuitant who has died) to the abated amounts of the value of their annuities (*Wroughton* v. *Colquhoun*, 1 De G. & S. 357). See "Abatement."

An annuitant, however, is not entitled to have his annuity valued, and the value paid him, where the annuity is given with a direction to set apart a fund to secure it (*Wright* v. *Callender*, 2 D. M. & G. 652; *Miner* v. *Baldwin*, 1 Sm. & G. 522).

And the tenant for life of a *corpus*, charged with an annuity, cannot have the value of the annuity paid out of the *corpus*, but the annuity must be satisfied from time to time by a sale of the *corpus* (*In re Grant, Walker* v. *Martineau*, 31 W. R. 703).

Where A. and B. are tenant-for-life and remainderman respectively, of settled property subject to an annuity charged thereon, and which the rents and profits are insufficient to pay, the annuity must be capitalized, and the burden apportioned between the tenant-for-life and remainderman according to the

ANNUITY—*continued.*

value of their respective interests (*Jones* v. *Mason*, 39 Ch. Div. 534; *Townson* v. *Harrison*, 43 Ch. Div. 55).

7. An annuity to A. for a fixed period for maintenance does not cease on his attaining 21, or by his death before that period (*Badham* v. *Mee*, 1 R. & M. 631).

An annuity to A., quâ trustee, for his trouble ceases with the active trusts (*Hull* v. *Christian*, 17 Eq. 546).

An annuity to A. for maintenance and education does not cease upon A.'s attaining 21, but is a gift for life (*Soames* v. *Martin*, 10 Sim. 287); followed in *Wilkins* v. *Jodrell*, 13 Ch. D. 554.

An annuity to A. (parent) during the minority of B. (child). Here, should B. die before attaining 21, A. will take till B., if living, would have attained 21, provided the object of the term was for his benefit (*Coates* v. *Needham*, 2 Vern. 65).

An annuity to A. and B. (though husband and wife) for their lives.

The gift is to A. and B. for their lives and the life of the survivor (*Moffat* v. *Burnie*, 18 B. 211).

A direction to purchase an annuity for the lives of A. and B. to be equally divided between them.

The gift is to A. and B. during the joint continuance of their lives (*Grant* v. *Wimbolt*, 2 W. R. 151).

A. and B., however, each take a separate annuity of £30 in a gift of the sum of £30 yearly, so long as they shall live (*Lill* v. *Lill*, 23 B. 445).

An annuity to A. and B. as tenants in common during their joint lives and the life of the survivor. Here, should A. die, his legal personal representatives would be entitled to half the annuity during the life of the survivor B. (*Bryan* v. *Twigg*, 3 Ch. 183; *Chatfield* v. *Berchtoldt*, 18 W. R. 387).

Annuity to A. and B. to be equally divided between them for their lives with a gift over after the death of both (or after the death of the survivor). Here, the survivor takes the whole for life (Theobald, 4th Ed. 420 *et seq.*).

As to apportionment of annuities, which in the absence of express stipulation to the contrary are to be considered as accruing from day to day, see Apportionment Act, 1870 (33 & 34 Vict. c. 35, ss. 2, 7).

III. *Annuity whether for life or perpetual.*

Where an annuity is given indefinitely, then, if given by a deed, whether charged on freeholds, or on freeholds and leaseholds, the annuitant takes only a life-interest (*Butt's Case*, 7 Rep. 23a; *In re Gilman's Estate*, I.R. 10 Eq. 92); if given by will, the presumption is that the annuity is given for life only. There may, however, be expressions in the will to show that the testator intended the annuity to be perpetual. For example, where there is a gift of the *corpus* to provide for the annuity (*Stokes* v. *Heron*, 12 Cl. & F. 161; *Hicks* v. *Ross*, 14 Eq. 141). Again, the gift of the income of a fund without limit as to time, and without any disposition of the *corpus*, is a gift of the fund itself (*Bignold* v. *Giles*, 4 Dr. 343).

To make an annuity, created by will, perpetual, there must be express words in the will so describing it, or the testator must by some language in the will indicate an intention to that effect. The most common indication is a direction by the testator to segregate and appropriate a portion of his property from the interest or profits of which the annuity is to be paid. Where this is done, the annuity when mentioned in the will represents the *corpus* so appropriated, and the *corpus* passing by the bequest of the annuity, the annuity may be said to be perpetual (*Lett* v. *Randall*, 2 De G. F. & J. 392).

ANNUITY—*continued.*

"I give and bequeath to A. all my property, landed and personal, except £500 a year, which I give and bequeath to B." The gift to B. was held to be a gift of the *corpus* sufficient to produce £500 a year (*Hill* v. *Potts*, 10 W. R. 439).

"I desire that my executrix shall purchase annuities for each of my two sisters, viz. A. and B., of £100 a year each, the said annuities to be purchased in the British funds" (*Kerr* v. *Middlesex Hospital*, 2 D. M. & G. 576).

"I direct my executors to purchase an annuity in Government Securities to the amount of £50 a year for my servant A., in consideration of her faithful services, the annuity to commence from the day of my decease" (*Ross* v. *Borer*, 2 Jo. & H. 469).

The annuities in both cases, were held to be perpetual.

However, a direction to invest a sum in Government securities sufficient to produce a certain annual sum, which is given to an annuitant, gives a life-interest only (*Re Grove's Trusts*, 1 Giff. 74; *Re Taber*; *Arnold* v. *Kayess*, 46 L. T. 805; 30 W. R. 883).

IV. *Annuity whether payable out of corpus or income.*

Out of corpus where—

(1) expressly charged thereon.

(2) simple bequest of annuity, even where followed by a direction to set apart a fund to secure the same, where the fund is upon the annuitant's death to fall into the residue;

Out of income only where—

(1) annuity directed to be paid out of part or the whole of the income of a sum to be set apart;

(2) the *corpus* is given over immediately on the death of annuitant, or where there is any direction to show that the *corpus* is to be looked upon as entire after the annuitant's death;

(3) there is a gift over of excess income (over that necessary to satisfy the annuity) each year as it accrues, to others. See Theobald on Wills, 4th Ed. 416, 417.

APPEAL.

1. **Against the assessment of Succession Duty** (ss. 45 and 50 of 16 and 17 Vict. c. 51).

S. 45 enacts that if the Commissioners are dissatisfied with the account and estimate submitted by the persons accountable for succession duty they may "cause an estimate to be taken by any person or persons to be appointed by themselves for that purpose, and to assess the duty on the footing of such last-mentioned account and estimate, subject to appeal as hereinafter provided; and if the duty so assessed shall exceed the duty assessable according to the return made to the Commissioners, and with which they shall have been dissatisfied, and if there shall be no appeal against such assessment, then it shall be in the discretion of the Commissioners, having regard to the merits of each case, to charge the whole or any part of the expenses incident to the taking of such last-mentioned account and estimate, on the interest of the successor in respect whereof the duty shall be due, in increase of such duty, and to recover the same forthwith accordingly; and if there shall be an appeal against such last-mentioned assessment then the payment of such expenses shall be in the discretion of the Court of Appeal hereinafter appointed."

By s. 10 (3) of 52 Vict. c. 7, it is enacted that:

The Commissioners of Inland Revenue, if dissatisfied with the account and

APPEAL—*continued.*

estimate originally delivered in conformity with s. 45 of the Succession Duty Act, 1853, may, subject to appeal as therein provided, assess the duty on the footing of such account and upon such estimate as they may place thereon, or proceed according to the directions of that section.

S. 50 of the Succession Duty Act, 1853, enacts that:

It shall be lawful for any accountable party dissatisfied with the assessment of the Commissioners, upon giving, within twenty-one days after the date of such assessment, notice in writing to the Commissioners of his intention to appeal against such assessment, and a statement of the grounds of such appeal, such statement to be furnished within the further period of thirty days, to appeal by petition accordingly to Her Majesty's Court of Exchequer in England, Scotland or Ireland, according to the place in which the appellant shall be resident; and every such Court, or any Judge thereof sitting in Chambers, shall have jurisdiction to hear and determine the matter of such appeal and the costs thereof, with power to direct, for the purposes of such appeal, any inquiry, valuation or report to be made by any officer of the Court, or other person as such Court or Judge may think fit; provided that where the sum in dispute in respect of duty on such assessment does not exceed £50, the accountable party may, having given notice of appeal and delivered a statement of the grounds thereof as hereinbefore directed, appeal to the Judge of the county court in England, the sheriff court in Scotland, or the assistant barrister's court in Ireland, for the district, county, or division in which the appellant shall be resident, or the property be situate; and every such Judge shall have jurisdiction to hear and determine the matter of such last-mentioned appeal, with the like power and authority as are by this section given to a Judge of Her Majesty's Court of Exchequer.

The right of appeal conferred by this section is where the liability to some duty is admitted, the only question being as to the value of the succession, or the details of the account.

And under such circumstances the appellant is entitled to begin (*Re de Lancey*, L. R. 4 Ex. 327 n.) But where the liability is not admitted, and the proceedings are by writ of summons for the purpose of enforcing delivery of an account and payment of the duty which may be found to be due, the Crown is entitled (*Re Greenwood*, L. R. 4 Ex. 327). See Hanson on Death Duties, 4th Ed. p. 713.

2. **From decision of Court of Exchequer** (ss. 59, 60, 61 of 28 & 29 Vict. c. 104).

S. 59. In proceedings by writ of summons as aforesaid, and also in cases of appeal to the Court of Exchequer from the assessment of the Commissioners of Inland Revenue under s. 50 of the Succession Duty Act, an appeal shall lie from the decision of the Court or a judge on a case stated by the parties; or, if they differ, settled by the Court of Exchequer or a judge, or any officer of the Court of Exchequer, to whom the same is referred by the Court or a judge; and the Court of Appeal shall give such judgment as ought to have been given by the Court of Exchequer or judge, and may award costs.

S. 60. The appeal in all such cases as aforesaid shall be made to the Court of Error in the Exchequer Chamber, and the decision of that Court shall be subject to appeal to the House of Lords.

S. 61. No such appeal shall be allowed unless notice thereof is given in writing to the opposite party or attorney, and to the proper officer of the Court of Exchequer, within four days after the decision complained of, or such further

APPEAL—*continued.*

time as may be allowed by the Court or a judge, and bail shall be given and approved of as provided with respect to suits at law on the revenue side of the Court of Exchequer.

3. **Against the assessment of Estate Duty.**

By s. 10 of the Finance Act, 1894, it is enacted that—

1. Any person aggrieved by the decision of the Commissioners with respect to the repayment of any excess of duty paid, or by the amount of duty claimed by the Commissioners, whether on the ground of the value of any property or the rate charged, or otherwise, may, on payment of or giving security as hereinafter mentioned for the duty claimed by the Commissioners, or such portion of it as is then payable by him, appeal to the High Court within the time and in the manner and on the conditions directed by rules of Court, and the amount of duty shall be determined by the High Court; and if the duty as determined is less than that paid to the Commissioners the excess shall be repaid.
2. No appeal shall be allowed from any order, direction, determination or decision of the High Court in any appeal under this section, except with the leave of the High Court or Court of Appeal.
3. The costs of the appeal shall be in the discretion of the Court, and the Court, where it appears to the Court just, may order the Commissioners to pay on any excess of duty repaid by them interest at the rate of 3 per cent. per annum for such period as appears to the Court just.
4. Provided that the High Court, if satisfied that it would impose hardship to require the appellant, as a condition of an appeal, to pay the whole, or, as the case may be, any part of the duty claimed by the Commissioners, or of such portion of it as is then payable by him, may allow an appeal to be brought on payment of no duty, or of such part only of the duty as to the Court seems reasonable, and on security to the satisfaction of the Court being given for the duty, or so much of the duty as is not so paid; but in such case the Court may order interest at the rate of 3 per cent. per annum to be paid on the unpaid duty, so far as it becomes payable under the decision of the Court.
5. Where the value, as alleged by the Commissioners, of the property in respect of which the dispute arises does not exceed ten thousand pounds, the appeal under this section may be to the County Court for the county or place in which the appellant resides or the property is situate, and this section shall for the purpose of the appeal apply as if such County Court were the High Court.

By s. 22 of the Finance Act, 1896, it is enacted that—

There shall be added to sub-s. 5 of s. 10 of the principal Act the following proviso: Provided that in every such case any party shall have a right of appeal to Her Majesty's Court of Appeal.

Rules issued regulating appeals to the High Court, see s. 10 (1) *supra*—

England.

1. Any aggrieved person within the meaning of s. 10, sub-s. (1) of the Finance Act, 1894, who desires to appeal to the High Court in any of the cases mentioned in the said sub-section shall, within one month from the date of the notification to him or his solicitor of the decision or claim of the Commissioners, deliver to them a written statement of the grounds of such appeal.

The statement shall state specifically the several grounds upon which the appellant contends that the decision or claim of the Commissioners was

APPEAL—*continued.*

erroneous, and if he contends that the value put upon any property by the Commissioners is excessive, he shall therein identify such property and state the value which he contends should be put upon the same.

2. The Commissioners shall, within a month from the delivery to them of the statement of the grounds of appeal, notify to the appellant or his solicitor whether they have withdrawn the decision or claim appealed against or have determined to maintain the same, either in whole or in part.
3. At any time thereafter not exceeding one month from the date of the notification by the Commissioners of their determination to maintain their decision or claim either in whole or in part, the appellant may proceed with his appeal by way of petition to the High Court, such petition to be filed in the Queen's Remembrancer's Department of the Central Office, and a copy thereof served by the appellant upon the Commissioners.
4. Subject to the provisions of these Rules the appellant shall not in his petition state or at the hearing be allowed to rely upon any grounds of appeal not specifically set forth in the statement of the grounds of appeal.
5. Upon the filing of the petition and the service of a copy thereof upon the Commissioners, the matter shall be deemed to be completely at issue, and within seven days thereafter the appellant, or in default thereof the Commissioners, may set the petition down for hearing upon the Revenue side of the Queen's Bench Division of the High Court.
6. The Court or a Judge may order that the petition shall be heard before a Judge of the Chancery Division, and Order XLIX., Rule 7, shall apply to any such Order.
7. Unless by consent, or otherwise ordered, only oral evidence shall be admitted at the hearing.
8. In cases where pursuant to Rule 7 evidence may be by affidavit, the affidavits shall be filed in the Queen's Remembrancer's Department.
9. The Crown shall have the same right as an ordinary suitor of administering interrogatories and of obtaining discovery and inspection of documents.
10. The Court or a Judge may, at any time before or at the hearing, allow the appellant to amend his petition, upon such terms as the Court or Judge may think right.
11. Order XIX., Rule 27, of the Rules of the Supreme Court, 1883, shall apply to the petition which shall be deemed to be a pleading within that rule.
12. Applications for leave to bring an appeal without payment, or on part payment only of the duty, under the provisions of the 4th sub-section of the 10th section of the Finance Act, 1894, shall be by summons before a Judge at Chambers, and the appellant shall deliver to the Commissioners, with the summons, a copy of any affidavit which the appellant intends to use at the hearing of the summons.
13. These Rules may be cited as the Rules of the Supreme Court (Finance Act), 1895, and shall come into operation forthwith.

Ireland.

1. Any aggrieved person within the meaning of s. 10, sub-s. (1) of the Finance Act, 1894, who desires to appeal to the High Court of Justice in Ireland in any of the cases mentioned in the said sub-section, shall, within one calendar month from the date of the notification, in writing, to him or his solicitor of the decision or claim of the Commissioners, deliver to them a written statement addressed to the Commissioners of the grounds of such appeal by leaving

APPEAL—*continued.*

the same during office hours at the Inland Revenue Office (Solicitor's Department), Custom House, Dublin.

2. The said statement shall contain the full name and address of the appellant and the name and Dublin office address of his solicitor (if any), and shall distinctly specify the several grounds upon which the appellant contends that the decision or claim of the Commissioners was erroneous, and if he contends that the value put upon any property by the Commissioners is excessive, he shall, in his said statement, identify such property, and state the value which he contends should be put upon the same.
3. The Commissioners shall, within one calendar month from the delivery to them as aforesaid of the statement of the grounds of appeal, notify, in writing to the appellant or his solicitor, whether they have withdrawn the decision or claim appealed against, or have determined to maintain the same either in whole or in any and what parts or part, and shall therein state the grounds of such decision and the particulars of such claim in so far as they have determined to maintain the same.
4. At any time thereafter not exceeding one calendar month from the date of the notification by the Commissioners of their determination to maintain their decision or claim either in whole or in part, the appellant may proceed with his appeal by way of petition to the High Court, such petition to be entitled in the Exchequer Division of the High Court, and filed in the Pleadings Office of that Division, and a copy thereof shall be served by the appellant upon the Commissioners by leaving the same at the Inland Revenue Office aforesaid during office hours.
5. At any time thereafter not exceeding two weeks from the service of the copy of the petition, the Commissioners shall file their answer thereto in the said Pleadings Office, and serve a copy thereof upon the appellant or his solicitor, and in default thereof the facts stated in the petition shall be deemed to be admitted, and the appellant may thereupon set the petition down for hearing upon the Revenue side of the said Exchequer Division.
6. Subject to the provisions of these Rules, the appellant shall not in his petition state, nor at the hearing thereof be allowed to rely upon any grounds of appeal not specifically set forth in his statement of the grounds of appeal. Nor shall the Commissioners at such hearing be allowed to rely upon any grounds to sustain their decision or claim not specifically set forth in their answer.
7. Upon the filing of the answer and the service of a copy thereof in manner aforesaid, the matter shall be deemed to be completely at issue, and within seven days thereafter the appellant, or, in default thereof, the Commissioners, within seven further days, may set the petition down for hearing as aforesaid.
8. The Lord Chancellor of Ireland (or, in case his office shall at the time be vacant, the Lord Chief Justice of Ireland) with the consent of the Lord Chief Baron, may order that the petition shall be heard before a Judge of the Chancery Division of the High Court to be named in such order, and it shall thereupon be transferred to and heard, and determined by such Judge.
9. Unless otherwise ordered, the evidence at the hearing of the petition shall be given *vivâ voce.*
10. In cases where, under Rule 9, evidence may be given by affidavit, the affidavit shall be filed in the proper office of the Exchequer Division.
11. The Commissioners and the appellant respectively shall have the same right as an ordinary suitor of administering interrogatories, and of obtaining

APPEAL—*continued.*

discovery and inspection of documents, as if the petition matter were an action in the High Court.

12. A Divisional Court of the Exchequer Division, or a Judge thereof, or the Judge to whom the petition shall be transferred as aforesaid, or, during the Long Vacation, the Vacation Judge, may, at any time, before or at the hearing, allow the appellant to amend his grounds of appeal and petition or the Commissioners to amend their answer upon such terms as the Court or Judge may think right as regards costs and otherwise.
13. The said Court or Judge may, at any stage of the proceedings on the petition, order to be struck out or amended any matter therein or in the answer which may be unnecessary or scandalous, or may tend to prejudice, embarrass, or delay the fair hearing or determination of the petition, and may on any application under this Rule order the costs of the application to be paid in whatever manner they or he shall think right.
14. Application for leave to bring an appeal without payment or on part payment only of the duty under the provisions of the 4th sub-section of the 10th section of the Finance Act, 1894, shall be by summons before a Judge of the said Exchequer Division at Chambers, or during the Long Vacation by notice before the Vacation Judge, and the appellant shall deliver to the Commissioners with a copy of the summons or notice, a copy of every affidavit which he intends to use at the hearing thereof, all such copies to be delivered at least four clear days before the day of hearing the summons or notice by leaving the same at the Inland Revenue Office aforesaid during office hours.
15. These Rules shall come into operation forthwith.

Scotland.

Whereas any person aggrieved within the meaning of the 10th section of the Finance Act, 1894, may appeal to the Court of Session against the decision or claim of the Commissioners of Inland Revenue in the cases mentioned in the said section, within the time and in the manner and on such conditions as shall be directed by Rules of Court: and whereas it is also enacted that "where the value as alleged by the Commissioners of the property in respect of which the dispute arises does not exceed ten thousand pounds," any person so aggrieved may appeal to the Sheriff Court for the county or place in which the appellant resides or the property is situated; the Lords of Council and Session, being the Court of Exchequer in Scotland, constituted by the Act 19 & 20 Vict. c. 56, do hereby, in pursuance of the said section, enact and ordain as follows—

1. The appellant shall, within one month from the date of the notification to him or his agent of the decision or claim of the Commissioners, give notice of appeal in writing, together with a written statement to the Commissioners of the grounds of such appeal.
2. The statement shall specify explicitly the several grounds upon which the appellant contends that the decision or claim of the Commissioners is erroneous; and if he contends that the value put upon any property by the Commissioners is excessive, he shall therein identify such property, and state the value which he contends should be put upon the same.
3. The Commissioners shall, within one month from the delivery to them of the notice and the statement of the grounds of appeal, notify to the appellant or his agent whether they have withdrawn the decision or claim appealed against, or have determined to maintain the same, either in whole or in part.

APPEAL—*continued.*

4. The appellant may, within one month from the date of the notification by the Commissioners of their determination to maintain their decision or claim, either in whole or in part, or, in the event of an application being made under Article 6 hereof, within ten days from the date of the interlocutor disposing of such application, proceed with his appeal either (*a*) by petition (marked for one of the divisions of the Court) to the Lord Ordinary in Exchequer causes, or, in his absence or inability, to the Lord Ordinary on the Bills for the time; or (*b*) where the value as alleged by the Commissioners of the property in respect of which the dispute arises does not exceed ten thousand pounds by petition in the Sheriff Court for the county or place where the appellant resides or the property is situated; and the Lord Ordinary or the Sheriff, as the case may be, shall order the petition to be served on the Commissioners or on the Solicitor of Inland Revenue for Scotland on their behalf, and may, if he thinks fit, appoint answers to such petition to be lodged, or parties to be heard thereon, with or without answers, and may thereafter give decree granting or refusing the prayer of the petition, or may take such other course with regard thereto as to him may seem proper.
5. The appellant shall not in his petition state any grounds of appeal not specifically set forth in the statement of the grounds of appeal delivered by him, along with the notice of appeal, to the Commissioners: Provided always that the Court may at any time before or at the hearing allow the appellant to amend his petition upon such terms as the Court may think right.
6. Where the appellant desires to apply for leave to bring an appeal without payment, or on part payment only, of the duty under the provisions of the 4th sub-section of section 10 of the Act, he shall within fourteen days from the date of the notification given by the Commissioners, in terms of s. 3 hereof, present a note to the Lord Ordinary or the Sheriff (as the case may be) craving for such leave, and shall specify therein the grounds on which his application is made, and the Lord Ordinary or the Sheriff shall dispose of such note summarily; provided always that he shall not grant the prayer thereof without giving the Commissioners an opportunity of being heard upon it.
7. If the appellant shall not proceed with his appeal by petition as aforesaid, he shall be held to have abandoned the same and shall not be entitled to proceed thereafter with it.
8. Except in so far as inconsistent with the foregoing provisions or the said Act, the Court of Exchequer (Scotland) Act, 1856 (19 & 20 Vict. c. 56), shall apply to all such petitions originating in the Court of Session; and the Sheriff Court (Scotland) Act, 1876 (39 & 40 Vict. c. 70), shall apply to all such petitions originating in the Sheriff Court.

And the Lords appoint this Act to be inserted in the Books of Sederunt, and to be printed and published in common form.

APPOINTMENT. See "Powers of Appointment."

APPORTIONMENT.

1. **Of Income:—**

The Apportionment Act of 1870 (33 & 34 Vict. c. 35) provides that after Aug. 1, 1870, all rents and other periodical payments in the nature of income, annuities, salaries, pensions, dividends, etc., shall be apportioned whether the tenancy is created verbally or by writing, in the absence of words to the contrary (s. 7).

APPORTIONMENT—*continued.*

But s. 6 excepts policies of assurance from the provisions of the Act.

The Act has been held to apply

to the will of a testator dying before the Act came into operation (*In re Cline's Estate*, 18 Eq. 213);

to specific as well as to residuary devises (*Pollock* v. *Pollock*, 18 Eq. 329 (dividends); *Capron* v. *Capron*, 17 Eq. 288 (rents));

but not to the profits of a private partnership or of a business belonging to the testator (*Jones* v. *Ogle*, 8 Ch. 192; *In re Cox's Trusts*, L. R. 9 Ch. D. 159). The profits of a public partnership or company are within the fifth section (*Carr* v. *Griffiths*, 12 Ch. D. 655).

Estate Duty.

Carry into the account annexed to the affidavit leading to the grant of probate or administration the apportionment of rents (of real or leasehold property) and income **up to the death** of the deceased.

The whole of the dividend, where the stock at the date of death is quoted "x. d.," should be accounted for; but where the stock in the affidavit is quoted "cum div.," this will in effect include the apportionment of the accruing dividend, which need not therefore be brought in.

Probate Duty.

As above, as to rents of real estate; and **up to the date of the grant** as to rents of leasehold property and other income.

2. Of **charges on a Mixed Fund.** See "Mixed Funds."

3. Of the **charge of £500** taken by a widow under the Intestates' Estates Act, 1890. See "Widow."

4. **Of Fines.**

As to apportionment between tenant-for-life and remainderman of fines paid for renewal of leaseholds (whether for years or for lives), the rule is, in the absence of express direction, for them to pay in proportion to the actual enjoyment they have of the renewed lease.

5. **Of Mortgage Debt.**

(1) **Locke King's Act** directs that every part of the mortgaged property, according to its value, shall bear a proportionate part of mortgage debts charged on the whole thereof, subject, however, to a contrary or other intention appearing by the instrument creating the charge. In *Sackville* v. *Smyth* (43 L. J. Ch. 494), where mortgagor devised all his real estate to A. subject to a life estate in a specific portion, it was held that the life estate was subject to a proportionate share of the burden, viz. to keep down the interest on the specifically devised portion. See also *Gibbins* v. *Eyden*, L. R. 7 Eq. 375.

(2) Where real and personal property are mortgaged together, Locke King's Acts make no provision, but it has been held that the mortgage debt must in such a case be apportioned (*Trestrail* v. *Mason*, 7 Ch. D. 655).

6. **Of Account Stamp Duty.**

Where the donee of a power of appointment appoints specific sums and the residue of the fund, the Account Stamp Duty and the Temporary Estate Duty payable on the death of the tenant for life must, in the absence of any expression of contrary intention by the appointor, be borne rateably by the respective appointed funds.

APPORTIONMENT—*continued.*

By a settlement in 1864 certain funds were settled upon trust for A. (*ob.* 1865), and B. (*ob.* 1891), during their joint lives,

Remainder to B. for life;

Remainder for such of his (B.'s) children as he should by deed or will appoint.

B. by will appointed the trust funds to trustees in trust to raise £5000 for each of two daughters, and after the death of his mother, to raise two further sums of £1000 each for each of his said daughters; and to raise £5000 for his son C., and another £5000 for his son D., if he should attain the age of twenty-one years, and he directed, during the minority of such son, the sum of £150 per annum should be applied out of the income of the residue for his maintenance. The residue he appointed to his son E., if he should attain the age of twenty-one, and subject thereto upon trust for his other children. Account Duty (s. 38, sub-s. 2c of 44 Vict. c. 12) and Temporary Estate Duty (s. 5, sub-s. 2 of 52 Vict. c. 7) being payable upon the death of B. in 1891, the question arose how this duty should be borne.

Held, that in the absence of any expression of contrary intention, each share must bear its proportion of the duty (*In re Croft; Deane* v. *Croft*, 40 W. R. 425; see also *Re Bourne* (1893), 1 Ch. 188; and *Re Shaw* (1895), 1 Ch. 343).

7. **Of Estate Duty.**

S. 9 (1) of the Finance Act, 1894, enacts that a **rateable part** of the Estate Duty on an estate, in proportion to the value of any property which does not pass to the executor as such, shall be a first charge on the property in respect of which duty is leviable; provided that the property shall not be so chargeable as against a *bonâ fide* purchaser thereof for valuable consideration without notice.

In the case of property which does not pass to the executor as such, an amount equal to the proper rateable part of the Estate Duty may be recovered by the person, who being authorized or required to pay the Estate Duty in respect of any property has paid such duty, from the person entitled to any sum charged on such property (whether as capital or as an annuity or otherwise), under a disposition not containing any express provision to the contrary (s. 14 (1)).

Any dispute as to the proportion of Estate Duty to be borne by any property or person, may be determined upon application by any person interested in manner directed by Rules of Court, either by the High Court, or, where the amount in dispute is less than fifty pounds, by a county court for the county or place in which the person recovering the same resides, or the property in respect of which the duty is paid is situate (s. 14 (2)).

See Order LV., r. 9 c., of Rules of Supreme Court (Nov.), 1895.

Any person from whom a rateable part of Estate Duty can be recovered under this section shall be bound by the accounts and valuations as settled between the person entitled to recover the same and the Commissioners (s. 14 (3)).

By a settlement of 1841, a fund was directed to be laid out in the purchase of lands to be held in trust for A. for life, with remainder as B. should by will appoint. B. died in 1866, in A.'s lifetime, having by will directed the reconversion into money of the trust premises, and appointed a specific amount, part thereof to C. absolutely, and the residue to others. The life tenant, A., died

APPORTIONMENT—*continued.*

after the Finance Act, 1894, came into operation. The fund had never been invested in the purchase of land.

Held (1) That the fund must be treated as land.

(2) That it was "property which passed" on the death of A., and was therefore liable to Estate Duty under s. 1 of the Finance Act, 1894.

(3) That the amount appointed to C. was a "sum charged on property" within the meaning of s. 14 (1).

(4) That the Estate Duty on the whole appointed fund should be borne, rateably, by C. and the appointees of the rest of the fund (**In re Orford** (*Countess*); **Cartwright** *v.* **Del Balzo** (1896), 1 Ch. 257).

A., in consideration of the marriage of his son B., covenanted that his executors should within six months of his death pay £25,000 to the trustees of the marriage settlement. The executors having paid the Estate Duty on A.'s net estate, took out a summons to determine the question whether the £25,000 ought not to bear a **proportionate part** of the duty. *Held*, that the whole must be paid out of the testator's (A.'s) residuary estate (**Re Gray, Gray** *v.* **Gray** (1896), 1 Ch. 620).

A., by a revocable post-nuptial settlement, settled personal property upon himself for life, and after his death, upon trust that the trustees should appropriate a part of the trust funds, of a specified value, to be held for B. and C. upon certain trusts, and should stand possessed of the residue in trust for A., his executors, administrators, and assigns. *Held*, that the executor of A. was entitled to receive from B. and C. a **rateable proportion** of the Estate Duty. **Re Meyrick, Meyrick** *v.* **Hargreaves**, 75 L. T. 621.

8. **Of Settlement Estate Duty** between Settled Legacies and Residue, see "Settlement Estate Duty."

APPRAISEMENT. See "Valuation."

ARMY PRIZE MONEY.

Where the same does not exceed £100, may be paid to the persons entitled as representing the deceased owner without any grant of probate or administration being obtained (31 & 32 Vict. c. 90).

ARREARS.

1. **Of Death Duties.**

The Crown was formerly entitled to 4 per cent. duty on arrears of Legacy Duty and Succession Duty, the acceptance or recovery thereof being an absolute waiver of any penalties incurred (s. 9 of 31 & 32 Vict. c. 124), which section enacts that—

Whereas it is expedient to make express provision as to the payment of interest on arrears of Legacy Duty and Succession Duty: Be it enacted, That in any case in which duty payable in respect of any legacy or residue under the Legacy Duty Acts now in force, or in respect of any succession under the Succession Duty Act, 1853, is or shall be in arrear, the person by whom the arrears of duty may be payable shall be liable to pay interest *at the rate of four pounds per centum per annum; and such interest shall be recoverable by the Commissioners of Inland Revenue in the same manner as the arrears of duty, and as part thereof:* Provided always, that the acceptance or recovery by the said Commissioners of arrears of duty, with interest thereon as aforesaid, shall be an absolute waiver of the penalties (if any) which may have been incurred under the Legacy Duty Acts or the Succession Duty Act.

ARREARS—*continued.*

The words in italics have, however, been repealed by s. 40 of the Finance Act, 1896, and s. 18 (2) has imposed a **3 per cent. rate of interest on all Death Duties.**

2. **Of Annuity.**

Where an annuity is charged upon or issues out of land, then, in a proper case, arrears will be ordered to be raised by a sale or mortgage of the land (*Tucker* v. *Tucker*, 1893, 2 Ch. 323).

3. **Of Income.**

Where executors, instead of selling reversionary property, wait till the reversion falls in, then the legatees will, in general, be entitled not only to six years' arrears, but to interest from one year after the death of the testator in respect of legacies payable out of such property (*Blachford* v. *Worsley*, 27 Ch. D. 676).

4. **Of Pin Money and Separate Estate.**

A married woman who has permitted her pin money to run into arrear, can only claim arrears for one year prior to her husband's death (*Townsend* v. *Windham*, 2 Ves. Sen. 7).

Where a married woman has permitted her husband to receive [not given] her separate income, she is, in general, entitled to one year's account only (*Darkin* v. *Darkin*, 17 B. 578).

ASSENT.

Assent of executor. See "Executor."

Assent of "real representative." See "Land Transfer Act, 1897."

Royal assent to Finance Acts, 1894, July 31; 1896, August 7; 1898, July 1.

ASSESSMENT.

I. **Of Succession Duty on personalty,** see s. 32 of 16 & 17 Vict. c. 51 (the Succession Duty Act), which incorporates ss. 8, 10, 11, 12, 14, and 23 of 36 Geo. 3, c. 52 (the Legacy Duty Act).

II. **Of Succession Duty on realty.**

1. **Generally.**

S. 21. Successor's interest in "real property" (*a*), except as herein provided, to be considered to be of the value of an annuity equal to the (net) annual value of the property (*b*), and payable from the date of his becoming entitled thereto in possession, or to the receipt of the income, during the residue of his life or any less period during which he may be entitled; and every such annuity is to be valued according to the tables in annexed schedule, the duty chargeable to be paid by eight equal half-yearly instalments (*c*), the first to be paid at the expiration of twelve months next after the successor shall have become

(*a*) As to successions to personal property, see s. 32.

(*b*) The decision in the case of *Attorney-General* v. *Sefton* (2 Hurlst. & Colt. 362) appears to have proceeded upon the admission in the information that the land was not capable of yielding income.

In the case of building land the practice now is to arrive at the annual value on the basis of

1. The rent which the land would yield if leased for a term commencing from the testator's death,

or, 2. a yearly sum equivalent to 3 per cent. on the full saleable value (the usual practice),

or, 3. a perpetual annuity equivalent to the value of the property. See also *Lord-Advocate* v. *Duke of Buccleuch* (25 Sco. L. R. 249).

(*c*) See optional method provided by 51 & 52 Vict. c. 8, s. 22 (Appendix).

ASSESSMENT—*continued.*

entitled to the beneficial enjoyment of the property, and the following instalments at half-yearly intervals of six months each, to be computed from the day on which the first instalment shall have become due; but instalments not due at successor's death cease to be payable unless successor was **competent to dispose by will of a continuing interest in such property** (*a*), in which case the unpaid instalments to be a continuing charge on such interest in exoneration of his other property, and to be payable by the owner for the time being of such interest.

Where deceased dies on or after Aug. 2, 1894, and the successor is "competent to dispose of the property," see *infra.*

2. **Special Cases.**

(*a*) **Charitable successions.**

S. 16. Successions subject to trusts for charitable or public purposes are chargeable with Succession Duty at the rate of £10 per cent. upon the amount or principal value of such property.

The duty so chargeable is apparently to be raised and paid at once, there being no provision similar to that in s. 27, in respect to successions taken by corporations, as to its payment by instalments.

(*b*) **Timber.**

S. 23. Timber, trees, or wood, not being coppice or underwood, is chargeable yearly on the net moneys received from the sales after deducting all necessary outgoings for the year; but no duty is payable in any year in which such net produce does not exceed £10. The successor may commute.

(*c*) **Advowsons.**

S. 24. No duty is payable by a successor in respect of any advowson or church patronage comprised in his succession unless the advowson, etc., or some right of presentation or some interest therein is sold "by or in concert with 'the successor' for money or money's worth," when the duty is payable on the amount or value realized.

(*d*) **Property of a fluctuating income—Mines, Manors, etc.**

S. 26. The annual value of real property yielding income of a fluctuating character (*e.g.* opened mines, manors, etc.) is calculated either:—

(1) On an average of the profits of such preceding years as may be agreed upon between the Commissioners and the successor; or

(2) if no such agreement be arrived at, by taking 3 per cent. on the ascertained principal value.

S. 25. A successor entitled to real property, subject to a beneficial lease, is chargeable with Succession Duty on his interest in any consideration

(*a*) The words "competent to dispose," etc., have reference to the EXTENT of the successor's interest and not to his personal capacity to make a will (*Attorney-General* v. *Hallet*, 2 Hurlst. & Norm. 368), and would appear to include not only a tenant in fee simple, but also,

A tenant-for-life with a general power of appointment by will (whether exercised or not),

A joint tenant who severs,

A tenant-in-tail who disentails and acquires the fee simple: *Lord Lilford* v. *Attorney-General* (L. R. 2 Eng. & Ir. H. L. App. 63).

But not a tenant for life who afterwards acquires the fee simple, nor an expectant successor in fee simple, who before being entitled in possession resettles his reversionary interest and cuts down his interest to a life estate.

ASSESSMENT—*continued.*

(fine, grassum, etc.) received during his life for the renewal of any such lease or the grant of any reversionary lease of such real property.

(*e*) **Where a Corporation succeeds.**

S. 27. Corporations, etc., as successors to real property, pay on the principal value, but by instalments.

(*f*) **Real Estate directed to be sold.**

S. 29. The interest of a successor in moneys to arise from the sale of real property under any trust for the sale thereof, so far as it is not chargeable under the Legacy Duty Acts, is to be deemed personal property chargeable with Succession Duty, provided that if, subject to a trust for reinvestment in realty to which the successor would not be absolutely entitled, such moneys are to be deemed real property, and the successor's interest therein to be considered to be of the value of an annuity payable during his life, or for any less period during which he shall be entitled, equal in amount to the annual produce of the actual trust property at the time of his becoming entitled in possession.

Where the proceeds of sale of real estate, subject to a trust for sale and reinvestment in land, to which the successor in expectancy is entitled as tenant-in-tail, are disentailed and resettled upon trust for reinvestment in real estate on himself for life, subject to the prior life-interest, under the original disposition, so that on his coming into possession upon the death of such prior tenant-for-life, he takes a life interest only, the duty is levied on such proceeds of sale for the life of the successor and not on the capital. The original disposition is at an end when the disentailing deed and resettlement are executed, save for the purpose of determining the rate of duty payable, the resettlement being the disposition conferring the succession, and the succession is an estate for life.

(*g*) **Money directed to be invested in real estate.**

S. 30. The interest of any successor in personal property subject to any trusts for the investment thereof in the purchase of real property to which the successor would be absolutely entitled, so far as it is not chargeable under the Legacy Duty Acts, is chargeable with Succession Duty as personal property; but if the successor would not be absolutely entitled to the realty, the property, so far as it is not chargeable under the Legacy Duty Acts, is chargeable with Succession Duty as realty; and each successor's interest is to be considered to be of the value of an annuity payable during his life, or for any less period during which he shall be entitled, equal in amount to the annual produce of the actual trust property at the time of his becoming entitled in possession.

Personal estate, subject to a power to invest in real estate, which, when purchased, is to be held upon trust for re-sale, with a declaration that the real estate so purchased is to be considered as money, is charged with duty on its principal value when it comes to the successor's hands, notwithstanding it be then actually invested in real estate; for if the successor had died in the lifetime of the tenant-for-life, it would have passed to his executors or administrators. It is a succession to personal estate under ss. 1 and 2, this section having reference only

ASSESSMENT—*continued.*

to personal property subject to a trust for reinvestment in real estate to be treated as such.

3. **Separate assessments of separate properties.**

S. 43. The Commissioners shall, at the request of any successor, or any person claiming in his right, accept or cause to be made so many separate assessments of the duty payable in respect of the interest of the successor, in any separate properties, or in defined portions of the same property, as shall be reasonably required; and in such cases the respective properties shall be chargeable only with the amount of duty separately assessed in respect thereof; and it shall be lawful also for the Commissioners, by their certificates, to be issued in such form as they shall think fit, from time to time to declare that any duties already assessed, whether collectively or distributively, in respect of any succession, shall thenceforth be charged, as to any unpaid instalments, according to any further distribution thereof, upon separate parts only of the property in respect of which such assessment shall have been made, in which case the charge of such duties shall be thenceforth limited according to such further distribution.

4. **Appeal from Assessment.** See "Appeal" (s. 50).

5. **Where deceased died after August 1, 1894, and successor is competent to dispose of the property.**

S. 18 of the Finance Act, 1894, enacts that:

(1) The value for the purpose of Succession Duty of a succession to real property arising on the death of a deceased person shall, where the successor is competent to dispose of the property, be the principal value of the property, after deducting the Estate Duty payable in respect thereof on the said death and the expenses, if any, properly incurred of raising and paying the same; and the duty shall be a charge on the property, and shall be payable by the same instalments as are authorized by this Act for Estate Duty on real property, with interest at the rate of 3 per cent. per annum; and the first instalment shall be payable and the interest shall begin to run at the expiration of twelve months after the date on which the successor became entitled in possession to his succession or to the receipt of the income and profit thereof; and after the expiration of the said twelve months the provisions with respect to discount shall not apply.

(2) The principal value of real property for the purpose of Succession Duty shall be ascertained in the same manner as it would be ascertained under the provisions of this Act for the purpose of Estate Duty; and in the case of any agricultural property where no part of the principal value is due to the expectation of an increased income from such property, the annual value, for the purpose of Succession Duty, shall be arrived at in the same manner as under the provisions of this part of this Act for the purpose of Estate Duty.

ASSETS.

(*a*) **Liability of, to Probate Duty:**—

All moneys recoverable by an executor by virtue of a probate, in whatever form recovered, whether through the agency of a court of equity, or a court

ASSETS—*continued.*

of law (*Attorney-General* v. *Brunning*, 8 H. L. C. 243) are liable to Probate Duty.

Foreign Assets.

"Where the assets are beyond the jurisdiction of the court at the time when the right to the duty (Probate Duty) attaches, duty is not payable thereon:" per Kelly, C.B., in *Attorney-General* v. *Pratt* (L. R. 9 Ex. 140). Therefore, Probate Duty is not payable in respect of French rentes (*Attorney-General* v. *Dimond*, 1 Cr. & Jerv. 356) (*a*), or Stock in the public funds of the United States (*Attorney-General* v. *Hope*, 1 Cr. Mee. & Rosc. 530). The duty, however, is payable in respect of foreign bonds passing by delivery, and capable of being dealt with in this country (*Attorney-General* v. *Bouwens*, 4 Mee. & W. 171). Foreign moveables not exempt from Estate Duty (*q.v.*).

(*b*) **Liability of, to Legacy Duty.**

This depends wholly upon the domicile of the owner at the time of his death, the local situation of the property being immaterial (*Re Ewin*, 1 Cr. & Jerv. 151; *Thomson* v. *Advocate-General*, 13 Sim. 153; 12 Cl. & Fen. 1).

Where foreign personalty is so liable, lineals are not exempt, the exemption provided by s. 41 of 44 Vict. c. 12, being limited to personalty which has paid Stamp (Probate or Account) Duty, in conformity with the provisions of 44 Vict. c. 12; but lineals exempt if Estate Duty paid thereon.

(*c*) **Order in which applied for payment of debts:—** (*b*)

1. The general personal estate is primarily applied to the payment of debts, unless exempted expressly, or by plain implication; but the testator's intention must be so expressed as to convince a judicial mind that it was meant not merely to charge the real estate, but so to charge it as to exonerate the personal estate.
2. Real estate expressly devised for payment of debts and only for that purpose.
3. Real estate being undisposed of, and therefore descending to the heir and not charged with debts.
4. Real or personal property charged with the payment of debts, and devised or suffered to descend, or specifically bequeathed subject to that charge (*c*)
5. General legacies (*c*) *pro rata.*
6. Specific gifts of either real or personal estate, and real estate comprised in a residuary devise not charged with debts.
7. Personal estate and real estate over which deceased had a general power of appointment which he has exercised by his will.
8. Paraphernalia of the widow of the deceased.

NOTE.—Land in a FOREIGN country is governed by the *lex loci rei sitæ*, and is only liable to such debts as would be cast upon it by the law of that country (*Harrison* v. *Harrison*, 8 Ch. D. 342).

Example.

T. seized and possessed of real and personal estate, and having a general power of appointment by will over certain property, makes his will as follows:—

(*a*) Certain French rentes, being transferable in this country, appear to be liable to Probate Duty, see "Rentes."

(*b*) Subject to the provisions of Locke King's Act [and the Amending Act] (*q.v.*).

(*c*) Kay, J., *In re Bate*, *Bate* v. *Bate*, 43 Ch. D. 600, has held that all personal estate not specifically bequeathed, not excepting general pecuniary legacies, must be applied in payment of debts, etc., before resorting to real estate though charged with debts. But this decision has not been followed in later cases by Sterling, J., in *Re Stokes*, 67 L. T. 223; by Kekewich, J., in *Re Butler*, (1894) 3 Ch. 250; and by Chitty, J., in *Re Salt*, (1895) 2 Ch. 203.

ASSETS—*continued.*

1. He devises his estate "Blackacre" to A. (specific devise).
2. He gives "my diamond ring" to B. (specific legacy).
3. He devises his estate "Greenacre" to C. upon trust to sell, and out of the proceeds to pay his debts.
4. He devises his estate "Whiteacre" to D. beneficially, but charged with his debts.
5. He gives £5000 to E. (general legacy).
6. He gives £1000 to F., payable out of his £10,000, Great Northern Railway Company Debenture Stock (demonstrative legacy).
7. He gives all his residuary, real, and personal estate to M. and N. (who predeceases testator, and whose share lapses to Q. R. S.).
8. He exercises his general power of appointment in favour of O. Q. is the testator's heir-at-law, and Q. R. S. his next-of-kin.

The following is the order in which T.'s property is resorted to for the payment of his debts:—

No. 7. (As to residuary personal estate).
No. 3.
No. 4.
No. 5 and also 6. If the primary fund (Great Northern Railway stock) not existing at testator's death.
Nos. 1, 2, and 6, if primary fund in existence; No. 7 (as to residuary real estate, including share descending to Q. by reason of lapse), but if such share had descended to him as heir, and not by reason of a lapsed devise, the lands in his hands would have been liable next to No. 3.
No. 8.

ASSIGNMENT.

1. Assignment of life policy and liability (*a*) to Succession Duty, see s. 17 of 16 & 17 Vict. c. 51; (*b*) to Account Duty, s. 38 (2 *a*) of 44 Vict. c. 12; s. 11 (1) of 52 Vict. c. 7. See "Policy."
2. Assignment by way of *bonâ fide* sale does not create a succession. See "Sale."
3. Assignment of reversionary interest, see "Reversionary Interest, Alienation of."

ASSIMILATION

Of English and Irish Legacy and Probate Duties (5 & 6 Vict. c. 82; 16 & 17 Vict. c. 59, s. 20).
Of Probate and Administration Duty (43 Vict. c. 14, s. 27).

ATTESTING WITNESSES, Gifts to. See "Witnesses, Gifts to."

AUNT

Liable to 5 per cent. Legacy Duty (55 Geo. 3, c. 184, sch., Part III.); 5 per cent. Succession Duty (s. 10 of 16 & 17 Vict. c. 51); or 6½ per cent. (s. 21 of 51 Vict. c. 8) on successions opening on or after July 1, 1888; but see "Additional Succession Duty." "Aunt" is not for purposes of duty a correct description of consanguinity: use the expression "sister of father" or "sister of mother."

AUSTRALIA, SOUTH. See "South Australia."

AUSTRALIA, WESTERN. See "Western Australia."

AUTRE VIE, estate pur.

An estate *pur autre vie* may arise either by an original grant out of an estate in fee simple, *e.g.* a grant to A. for the life of B., or where a person (B.), being himself only a tenant-for-life, grants to another (A.) his own life estate.

A., in either case, has an estate *pur autre vie*, and is called the tenant *pur autre vie*, B. being called the *cestui que vie*.

Such an estate is the least estate of freehold which the law recognizes, and descends either to the heir-at-law or executor according to the limitations contained in the latest instruments affecting the estate. For example, where the limitation was to A. and his heirs, or to A. and the heirs of his body, the heir would take on the death of A. not as heir, but as special occupant, that is, as the person to whom the estate was given after his ancestor. When limited to the grantee and the heirs of his body, we have an example of a quasi-entail, which can be barred by will, save as to quasi-remainders on them. A tenant in quasi-entail in possession can, by ordinary deed, without enrolment, bar both issue and quasi-remainders; if not in possession, he can bar only his issue, unless he has the assent of the tenant in possession.

S. 6 of the Wills Act (1 Vict. c. 26) provides that estates *pur autre vie* of a freehold nature, given to a man and his heirs, pass, if undisposed of, (*a*) to the heir, subject to debts; and (*b*) if no heir, to the executor as part of the personal estate, whether the interest is legal or equitable (*Plunket* v. *Reilly*, 2 Ir. Ch. 585; *Reynolds* v. *Wright*, 25 B. 100); and "if the same shall come to the executor or administrator, either by reason of a special occupancy, or by virtue of this Act, it shall be assets in his hands, and shall go and be applied and distributed in the same manner as the personal estate of the testator or intestate."

For example, A. limits an estate *pur autre vie* to B. and his heirs; B. devises the same to trustees, their executors and administrators, on trust for C., who dies intestate; the estate passes to C.'s personal representative.

Thus an estate *pur autre vie* may devolve to the executors or administrators, either as special occupants (being specially named in the grant), or because there is no special occupant so named.

A devise, since the Wills Act, of an estate *per autre vie*, without words of limitation, does not amount to a designation of the devisee's heir as special occupant, and upon his death intestate the estate passes to his legal personal representative under s. 6 of the Wills Act (*Re Sheppard*; *Sheppard* v. *Manning*, 76 L. T. 756).

Legacy, Probate, and Succession Duty.

An estate *pur autre vie* is not liable to Probate Duty (except in Ireland, s. 22 of 54 Geo. 3, c. 92), for though distributable as personal estate it continues to be in fact real estate, the executor or administrator holding it as a freehold estate in trust for those entitled to the personal estate of the deceased, subject to the payment of his debts (*Ripley* v. *Waterworth*, 7 Ves. 425). It is, however, as Real Estate, liable to Estate Duty, Finance Act, 1894, s. 1.

An estate *pur autre vie* descending to the heir as special occupant is not taxable under the provisions of s. 20 of 36 Geo. 3, c. 52, but is embraced by the provisions of s. 1 of 16 & 17 Vict. c. 51. See *Reg.* v. *Norreys*, 2 Ir. C. L. R. 414 (Irish Case).

Estates *pur autre vie*, "applicable by law in the same manner as personal estate," are not only taxable under the provisions of s. 20 of 36 Geo. 3, c. 52 (and this liability is not affected by the domicile of the deceased, *Chatfield* v. *Berchtoldt*, L. R. 7 Ch. App. 191), but would appear to be within the provisions of s. 1 of

AUTRE VIE, estate pur—*continued.*

the Succession Duty Act (16 & 17 Vict. c. 51), the exemptions in ss. 18 and 19 of that Act apparently not applying to them. Therefore, since 51 Vict. c. 8, estates *pur autre vie* would appear to be liable to the Additional Succession Duty where chargeable.

Estate Duty.

Is payable upon property in which **some person other than the deceased had an interest ceasing on the death of the deceased** to the extent to which a benefit accrues or arises by the cesser of such interest (Finance Act, 1894, s. 2 (1) (*b*)). The duty is payable out of the property itself.

B.

BAHAMAS—

Date of Order in Council (Finance Act, 1894), May 11, 1895.

Death duty :—

Fees on letters, testamentary and administrative, imposed by the Act 39 Vict. c. 8.

£	Scale. With a Will.	Without a Will.
Under 10	4*s.*	5*s.*
„ 20	6*s.*	8*s.*
„ 30	8*s.*	10*s.*
„ 50	12*s.* 6*d.*	16*s.*
„ 100	20*s.*	22*s.* 6*d.*
Over 100	2 per cent.	2 per cent.

BAILIFF.

Salary of, not a necessary outgoing, within s. 22 of Succession Duty Act (16 & 17 Vict. c. 51), and therefore cannot be deducted against Succession Duty. (*Re Elwes*, 3 Hurlst. & Norm. 719). Not accountable for Estate Duty quâ bailiff Finance Act, 1894, s. 8 (4).

BANK NOTE

Is included in a bequest of MONEY (*Chapman* v. *Hart*, 1 Ves. Sen. 271); may be the subject of a *donatio mortis causâ* (*Miller* v. *Miller*, 3 P. Wms. 356).

BANK SHARES, Calls on. See "Calls."

BANK OF ENGLAND PROVIDENT SOCIETY.

An insurance on his life effected therein by a deceased person is liable to Estate Duty.

BANKRUPTCY.

1. The property divisible among a bankrupt's creditors includes (1) all such property (except tools of trade, wearing apparel, etc.) as may belong to or be vested in him at the commencement of his bankruptcy, or may be acquired by, or devolve on, him before his discharge, except property vested in him in quâ trustee, which remains vested in him notwithstanding his bankruptcy (Act of 1883, s. 44); (2) any powers over or in respect of property which the bankrupt could have exercised for his own benefit, except the right to nominate to a vacant ecclesiastical benefice, but the trustee in bankruptcy's

BANKRUPTCY—*continued.*

consent would even here be necessary if the exercise of the power might affect his interest in any property.

A mortgagee may, where the mortgagor is bankrupt, realize his security and prove for the balance of his claim; or may surrender his security to the trustee and prove for the whole of his claim; or may have his security valued and prove for the balance; the trustee, in the last case, being entitled to redeem the security at its assessed value.

2. A trust to A. with a gift over to B. on his (A.'s) bankruptcy or alienation is good (*Billson* v. *Crofts*, 15 Eq. 314; *Re Alwyn's Trusts*, 16 Eq. 585).

3. However, a settlement (though an antenuptial marriage settlement) by A. upon himself until bankruptcy and then over is void, for the express object of such a trust is an illegal one, viz. to cheat his creditors (*Brooker* v. *Pearson*, 37 B. 181; *Re Pearson*, 3 C. D. 807; but see *Re Detmold*, 40 C. D. 585).

Death Duties.

1. *Priority* (**Legacy Duty**).

(*a*) Elizabeth Jane Stokes died on March 19, 1881, and probate of her will was on May 2, 1881, granted to her executor, George Alexander Stephens, who subsequently became a bankrupt.

The executor omitted to account for the personal estate (save as regards a legacy of £400 on which duty was paid), and the duties upon the remaining pecuniary legacies and residue were estimated at £390 10*s.* 6*d.* and £129 16*s.* 6*d.* respectively. The residuary legatee, George W. Stephens, proved his claims against the bankrupt's estate in respect of the residue, and an application was made to the Court (the Court of Bankruptcy in Ireland) on behalf of the Commissioners of Inland Revenue for the payment of the above duties out of the assets of the bankrupt.

The Court gave judgment for the Crown for the amounts claimed. (*Re G. A. Stephens*, a bankrupt, XXXIIIrd report of Commissioners of Inland Revenue.)

(*b*) A., executor of B., received and applied for his own use, assets of B. without payment to the Crown of Legacy Duty payable in respect of certain legacies. A. was subsequently adjudicated a bankrupt, and his assignees in bankruptcy realized his estate.

Held, upon appeal to Her Majesty's Court of Appeal in Ireland from a decision of Mr. Justice Boyd (Judge in Bankruptcy), that the Crown debt for Legacy Duty was **entitled to priority** over the general creditors of the bankrupt; and that such priority could be asserted by motion in the bankruptcy matter, and existed notwithstanding the vesting of the bankrupt's estate in his assignees. It was held by Mr. Justice Boyd that costs cannot be given against the Crown where the Attorney-General is not a party *eo nomine* (Re *Galvin*, a bankrupt (1897) 1 I. R. 520).

2. **Estate Duty.**

A. (tenant-for-life of real estate or personal estate) dies after August 1, 1894. B., who has a vested interest in expectancy, predeceased A., and died insolvent, the whole of the property passing being applicable towards payment of his creditors. If B. is a member of the "family" of A., the property would appear to be aggregable; but, if not, Estate Duty would appear to be payable on the entirety of the property as an "estate by itself."

BARBADOS—

Date of Order in Council (Finance Act, 1894): June 29, 1896.

Death duty imposed by "The Estate Duty on Absentees' Act, 1895."

BARBADOS—*continued.*

The amount leviable, which is restricted to property in the Colony chargeable with the British Estate Duty, is regulated by and identical with what turns out to be the British Estate Duty.

BARE TRUSTEE.

Is one who has no duty to perform beyond conveying the estate at the request of the *cestui que trust.*

BASE FEE.

"That estate in fee simple into which an estate tail is converted where the issue tail are barred, but persons claiming estates by way of remainder or otherwise are not barred" (s. 1 of 3 & 4 Will. 4, c. 74).

The tenant-in-tail thereby acquires a disposable estate in the land for so long as he may have issue, on the failure of whom those having estates in remainder or reversion will become entitled.

A base fee may be enlarged into a fee simple; for example, where

(*a*) the immediate remainder or reversion in fee in the same lands becomes united with it in the same person without any intermediate estate (s. 39), or where

(*b*) the tenant afterwards obtains the assent of the protector and makes a new disposition thereon (ss. 19, 35).

Moreover by 3 & 4 Will. 4, c. 27, s. 23, all remainders and reversions over were barred at the expiration of 20 (now 12, s. 6 of 37 & 38 Vict. c. 57) years after the time when the assurance, if then executed, would have barred them. The owner of a base fee in possession has the powers of alienation, etc., given to tenants for life and others by the Settled Land Acts, 1882 to 1890.

BASTARD.

1. Cannot acquire as heir-at-law or next-of-kin under the Statutes of Distribution, except in succession to his own legitimate issue, and he himself can have no heir-at-law or statutory next-of-kin, other than such issue.
2. Where legitimated according to law of father's domicile and held to share as one of the next-of-kin in the personalty of an intestate dying domiciled in this country. See "Illegitimacy."
3. Where a member of certain societies may take as if legitimate:—

The Provident Nominations and Small Intestacies Act, 1883, provides that "if a member of any society who is entitled to make a nomination under this Act or the Acts hereby amended (that is to say, members of Friendly, Industrial, and Provident Societies, Trade Unions and Savings Banks) is illegitimate, and has died intestate, and without having made any such nomination subsisting at his death, the directors may pay the sum which such member might have nominated to or among the person or persons who, in the opinion of the majority of them, would have been entitled thereto if such member had been legitimate, or, if there are no such persons, then the deposits shall be dealt with as the Commissioners of the Treasury may direct."

BEECH CASE. Finance Act, 1894, ss. 1, 2 (1) (*b*).

Under a marriage settlement the wife (W.) was entitled to certain property for her life, with remainder to her son (S.) absolutely. W., more than twelve months before her death (*ob.* 1896), surrendered (in 1886) to the trustees of the

BEECH CASE—*continued.*

settlement her life interest in the property, so that such life interest might merge in the interest in remainder of her son (S.).

It was *held*, upon the death of W., that, as by the surrender her life interest had ceased to exist more than twelve months before she died, **no property passed on her death** within the meaning of s. 2 (1) (*b*) of the Finance Act, 1894, and Estate Duty was not payable.

Judgment of the Queen's Bench Division (*Attorney-General* v. *Beech* (1897), 2 Q. B. 535) reversed. C. A. (1898), 435.

An appeal to the House of Lords is now pending.

BENEFICIAL LEASE.

S. 25 of the Succession Duty Act, 1853, enacts that :—

Where a successor, entitled to any real property, subject to any **lease** by reason whereof he shall not be presently entitled to the full enjoyment thereof, shall not have paid duty in respect of the full yearly value of such property, he shall be chargeable with duty upon his interest in any fine or grassum or other consideration which may be received during his life for the **renewal of any such lease**, or the **grant of any reversionary lease** of the same property. See further, "Leaseholds."

"BENEFICIALLY ENTITLED."

S. 2 of the Succession Duty Act, 1853, enacts that—

Every past or future **disposition of property**, by reason whereof any person has or shall become **beneficially entitled** to any property or the income thereof upon the death of any person dying after the time appointed for the commencement of this Act, either immediately or after any interval, either certainly or contingently, and either originally or by way of substitutive limitation, and every **devolution by law of any beneficial interest** in property, or the income thereof, upon the death of any person dying after the time appointed for the commencement of this Act, to any other person, in possession or expectancy, shall be **deemed to have conferred or to confer on** the person entitled by reason of any such disposition or devolution a **"succession"**; and the term "successor" shall denote the person so entitled; and the term "predecessor" shall denote the settlor, disponer, testator, obligor, ancestor or other person from whom the interest of the successor is or shall be derived.

The words "beneficially entitled" refer to the time when the interest fell into possession although it may have vested or accrued before May 19, 1853 (the date of the Act).

A. (*ob.* 1827) devised real estate to B. (*ob.* July, 1853) for life, remainder to B.) first and other sons in tail. C., son of B., became (prior to May 19, 1853, tenant-in-tail in remainder expectant on the death of B. C. was held liable to Succession Duty although his interest accrued before May 19, 1853 (**Wilcox** *v.* **Smith**, 4 Drew 40).

The case of **Attorney-General** *v.* **Lord Middleton** (3 Hurlst. & Norm. 125) involved similar circumstances, and the Court of Exchequer came to a like conclusion. See also *Attorney-General* v. *Gell*, *ante*, "Accumulations."

A., subsequent to May 19, 1853, by an irrevocable deed settled personalty upon trust for himself for a term of four years, if he should so long live, and upon trust for his nieces therein named, absolutely on the expiration of the term or on his death whichever should first happen.

"BENEFICIALLY ENTITLED"—*continued.*

A. died eighteen months before the expiration of the term.

Held, that Succession Duty was payable on the whole sum (and not merely on the income thereof for the period between the death of A. and the end of the term) and that the event on which the nieces came into possession was the death of the settlor, and they were chargeable with duty accordingly. In this case the successors became "beneficially entitled" on the death, although they would, apart from the death, have become entitled on the expiration of the term (**Attorney-General** *v.* **Noyes** 8 Q. B. D. (C. A.) 125, 30 W. R. 434).

BENEFIT.

S. 4 of Finance Act, 1894, enacts that—

For determining the rate of Estate Duty to be paid on any property passing on the death of the deceased, all property so passing in respect of which Estate Duty is leviable shall be aggregated so as to form one estate, and the duty shall be levied at the proper graduated rate on the principal value thereof.

Provided that any property so passing, in which the deceased never had an interest, or which under a disposition not made by the deceased passes immediately on the death of the deceased to some person other than the wife or husband, or a lineal ancestor or lineal descendant of the deceased, shall not be aggregated with any other property, but shall be an estate by itself, and the Estate Duty shall be levied at the proper graduated rate on the principal value thereof; **but if any benefit under a disposition not made by the deceased is reserved or given** to the wife or husband or a lineal ancestor or lineal descendant of the deceased, **such benefit shall be aggregated** with property of the deceased for the purpose of determining the rate of Estate Duty.

Example.

A. is tenant for life of Whiteacre and has power to charge an annuity thereon in favour of his widow, B., which power he exercises by will.

C., who is the remainderman, pays the Estate Duty on Whiteacre, and deducts from the periodical payments of the annuity to B. the appropriate part of the duty attributable to the annuity. See "Apportionment of Duty."

Where, however, C. is a collateral relation of A. (the deceased), the property charged with the annuity passes to C. as an "estate by itself" (*q.v.*), and the value of the jointure calculated for the life of the jointress at her then age (at the death of deceased) is "aggregated with property of the deceased for the purpose of determining the rate of Estate Duty" on both property and jointure.

BERMUDAS.

Date of Order in Council (Finance Act, 1894), May 11, 1895. No Death Duty leviable.

BILL OF EXCHANGE.

A bill of exchange payable to bearer, or indorsed in blank, if presented for payment or negotiated before the donor's death, but not otherwise, is a valid *donatio mortis causâ.*

BODY CORPORATE, GIFTS TO.

1. *Estate Duty.*

As to exemption of pictures, prints, etc., bequeathed to a municipal corporation, see s. 15 (2) Finance Act, 1894; s. 20 of Finance Act, 1896. "Exemptions."

BODY CORPORATE, GIFTS TO—*continued.*

Note that property in which deceased was interested as a member of a corporation, or as a corporation sole, is expressly exempted from Estate Duty. Finance Act, 1894, s. 2 (1 b).

2. *Succession Duty.*

When entitled to Real Property as successors must pay duty on the PRINCIPAL value, but by the usual instalments (s. 27 of 16 & 17 Vict. c. 51).

Duty is also payable on the PRINCIPAL value where a body corporate becomes entitled to a succession by alienation (*Solicitor-General* v. *The Law Reversionary Interest Society*, L. R. 8 Ex. 233).

Note that the duty on successions subject to trusts for CHARITABLE or PUBLIC purposes is payable on the principal value AT ONCE (s. 16).

Money bequeathed upon trust for building and endowing a church is for a public and not a charitable purpose, and is liable to Succession Duty under s. 16 (*Re Parker*, 4 H. & N. 666).

Charitable successions in Ireland would appear to be exempt from Succession Duty (s. 18).

3. *Legacy Duty.*

As to exemption of chattels specifically bequeathed for the purpose of preservation and not of sale to a body corporate, see s. 1 of 39 Geo. 3, c. 73, and 55 Geo. 3, c. 184, sch., Part III.

BONA NOTABILIA.

Goods sufficient in amount to require a probate or administration to be taken out under Ecclesiastical law—the jurisdiction of the Ecclesiastical Courts as to wills and administrations was, however, abolished, and the Court of Probate established by 20 & 21 Vict. c. 77.

BONA VACANTIA.

Those things in which nobody claims a property, and which belong to the Crown by virtue of its prerogative.

BOND. See "Administration Bond."

BOND DEBT.

A specialty Debt of any person dying on or after Jan. 1, 1870 (32 & 33 Vict. c. 46), ranks with simple contract debts.

Bequest of debt due on bond (or other security) passes the capital only, and not arrears of interest due at the death (*Roberts* v. *Kuffin*, 2 Atk. 112).

There may be a good *donatio mortis causâ* of a bond (*Snellgrove* v. *Bailey*, 3 Atk. 214).

Where voluntary, see "Voluntary Debt."

An executor is liable upon, though not named, and though not due till after testator's death.

BONDS.

If registered, and the coupons payable to registered owners only, are considered as *bona notabilia* in the country of registration.

Foreign bonds payable to bearer are liable to PROBATE DUTY (*Attorney-General* v. *Bouwens*, 4 Mee. & W. 171).

Heritable bonds for the purposes of the Succession Duty Act, are assessed as if personal estate (s. 1 of 16 & 17 Vict. c. 51).

BONDS—*continued.*

Post-obit bonds (*q.v.*) and their liability to Succession Duty, see s. 17 of 16 & 17 Vict. c. 51).

BOND STAMP.

In INTESTATE cases, where the value is above £100, though not above £300, the sum of 5*s.* is payable for the stamp on the administration bond, in addition to the 30*s.* payable under s. 33 of 44 Vict. c. 12. But where not above £100 nothing is payable beyond 15*s.* for fees and expenses.

BONUS.

Bonuses declared out of capital are capital (*Paris* v. *Paris*, 10 Ves. 185).

Bonuses declared out of profits, whether accumulated or not, are income.

Bonuses on shares declared before testator's death, but not payable till afterwards, will not pass with the shares (*Lock* v. *Venables*, 27 Beav. 598).

"When a testator or settlor directs or permits the subject of his disposition to remain as shares or stocks in a company which has the power either of distributing its profits as dividend, or of converting them into capital, and the company validly exercises this power, such exercise of its power is binding on all persons interested under the testator or settlor in the shares, and consequently what is paid by the company as dividend goes to the tenant-for-life, and what is paid by the company to the shareholder as capital, or appropriated as an increase of the capital stock in the concern, enures to the benefit of all who are interested in the capital." Dictum of Lord Justice Fry in *Re Bouch, Sproule* v. *Bouch* (29 C. D. 635, at p. 653: 12 App. Cas. 385, at p. 245), quoted with approval by Lord Herschell.

BOOK DEBTS.

Gift of, passes the balance of debts due after deducting trade and private debts due from the testator (*Chick* v. *Blackmore*, 2 Sm. & G. 274).

BOOKS.

Gift of, not liable to Legacy Duty, where the legatee's total benefit (in respect to property liable to Legacy Duty) under the will is less than £20.

Gift of, to a body corporate, when exempt from Legacy Duty. *Vide* "Exemptions."

Accounting parties, if required by the Commissioners, must produce books and documents to verify accounts (s. 49 of 16 & 17 Vict. c. 51; s. 37 of 44 Vict. c. 12); s. 8 (14) of Finance Act, 1894.

Gift of, and exemption from Estate Duty, when objects of national, scientific, or historic interest, Finance Act, 1896, s. 20; and see Finance Act, 1894, s. 15 (2).

BOROUGH ENGLISH

Is socage tenure: but according to custom the estate descends to the YOUNGEST SON in exclusion of all the other children. The custom does not in general extend to collateral relations.

Where Borough English lands are devised with other lands to testator's heir, the common law heir is entitled (*Davis* v. *Kirk*, 2 K. & J. 391).

BRITISH COLUMBIA.

Date of Order in Council (Finance Act, 1894), Oct. 26, 1896.

Death duty imposed by "The Succession Act, 1894" (57 Vict. c. 47).

BRITISH COLUMBIA—*continued.*

SCALE.

Value of Property Liable to Duty.	Rate of Duty per centum.
Upon the value up to 100,000 dols.	1 dol.
Where said value reaches 100,000 dols., but does not reach 200,000 dols.	2 „
Where said value reaches 200,000 dols., but does not reach 700,000 dols.	3 „
Where said value reaches 700,000 dols., but does not reach 1,000,000 dols.	4 „
Where said value reaches 1,000,000 dols. or more	5 „

Exemptions.

(1) Any estate where value (after deducting Administration expenses and just debts and liabilities) does not exceed 5000 dols.

(2) Property passing by will, intestacy, or otherwise, to or for the use of the father, mother, husband, wife, child, grandchild, daughter-in-law or son-in law of the deceased, where the aggregate value of such property does not exceed 25,000 dols.

(3) Subject to (2), where the property in an estate exceeding 25,000 dols. passes to or for the use of any one person, being the father, mother, husband, wife, child, grandchild, daughter-in-law or son-in-law of the deceased, under a will or intestacy, then the first 5000 dols. is exempt, and duty is charged at one-half the several aforesaid rates on the excess above 5000 dols.

BRITISH GUIANA.

Date of Order in Council (Finance Act, 1894), Feb. 22, 1896.

Death duties (Testamentary Duty, Legacy Duty, and Succession Duty) were imposed by "The Tax Ordinance, 1892," and are re-imposed annually.

SCALE.

Testamentary Duty.

This duty, which is a stamp duty on the affidavit leading to representation, is payable where the value of the estate and effects exceeds 500 dols., when the duty is 7 dols. 50 cents, and the rate is 7 dols. 50 cents. for every 500 dols. or part thereof, without limit.

Legacy and Succession Duty.

Lineals	½ per cent.
Brothers and sisters, and their descendants	1½ „
Uncles and aunts, and their descendants	2½ „
Great uncles and great aunts, and their descendants ..	3 „
Other persons	5 „

The main exemptions are:—

(1) The personal estate, where under 500 dols.

(2) Successions derived by the same death from one predecessor, where in the aggregate under 500 dollars.

(3) Successors under 100 dols. each.

Rate of interest on duty in arrear .. .. 6 per cent.

BRITISH INDIA (not including the Feudatory Native States)—

Date of Order in Council (Finance Act, 1894), Feb. 2, 1895.

Death duty imposed by "The Indian Court Fees Act, 1870").

BRITISH INDIA—*continued.*

Rate, 2 per cent., where the assets, in respect of which Probate is granted, exceed Rs. 1000.

See further, "India."

BRITISH POSSESSIONS.

It is enacted by s. 20 of the Finance Act, 1894—

1. Where the Commissioners are satisfied that, in a British possession to which this section applies, duty is payable by reason of a death in respect of any property situate in such possession and passing on such death, they shall allow a sum equal to the amount of that duty to be deducted from the Estate Duty payable in respect of that property on the same death.
2. Nothing in this Act shall be held to create a charge for Estate Duty on any property situate in a British possession, while so situate, or to authorize the Commissioners to take any proceedings in a British possession for the recovery of any Estate Duty.
3. Her Majesty the Queen may, by Order in Council, apply this section to any British possession, where Her Majesty is satisfied that, by the law of such possession, either no duty is leviable in respect of property situate in the United Kingdom when passing on death, or that the law of such possession as respects any duty so leviable is to the like effect as the foregoing provisions of this section.
4. Her Majesty in Council may revoke any such Order where it appears that the law of the British possession has been so altered that it would not authorize the making of an Order under this section.

POSSESSIONS TO WHICH THIS SECTION HAS BEEN APPLIED BY ORDERS IN COUNCIL.

Possession.	Date of Order.
Bahamas	11th May, 1895.
Barbados	29th June, 1896.
Bermudas	11th May, 1895.
British Guiana	22nd February, 1896.
British India (not including Feudatory States)	2nd February, 1895.
Cape of Good Hope	13th August, 1895.
Ceylon	11th May, 1895.
Falkland Islands	3rd October, 1895.
Fiji	24th August, 1895.
Gambia	11th May, 1895.
Gibraltar	16th July, 1895.
Gold Coast	16th July, 1895.
Hong Kong	11th May, 1895.
Lagos	16th July, 1895.
Leeward Islands	16th July, 1895.
Natal	16th July, 1895.
New Zealand	2nd February, 1895.
Newfoundland	8th March, 1895.
Sierra Leone	8th February, 1896.
South Australia	11th May, 1895.
Straits Settlements	11th May, 1895.
Tobago	13th August, 1895.
Trinidad	13th August, 1895.
Victoria	8th February, 1896.
Western Australia	16th July, 1895 (First Order). 1st August, 1896 (Second Order).

BRITISH POSSESSIONS—*continued.*

The amount actually paid on the property in question in the British possession according to its value in British money on the day of payment, is the amount allowed as a deduction against Estate Duty. The amount allowed will, of course, never exceed the total amount paid here in respect of the particular property. Therefore where the rate of duty payable in the British possession exceeds the rate of Estate Duty payable in England the payment of the Colonial duty operates to cancel the Estate Duty on the Colonial asset; where, however, Settlement Estate Duty is also payable on the same asset, the excess Colonial Duty is, in practice, admitted as a *pro tanto* deduction against this further Estate Duty. Although there may be in the result no Estate Duty on the Colonial assets payable, the inclusion thereof in the Affidavit may operate to increase the rate payable on the English assets.

See further, "Deductions."

BROTHER.

Liable to 3 per cent. Legacy Duty (55 Geo. 3, c. 184, sch., Part III.), and 3 per cent. and 4½ per cent. Succession Duty (s. 10 of 16 & 17 Vict. c. 51; s. 21 of 51 Vict. c. 8); but see "Additional Succession Duty."

BUILDING LEASE.

A "building lease" is a lease of land frequently for a term of 99 years or thereabouts, but often for a term of such length as to be practically equivalent to a perpetuity, at a rent of the annual value of the land (called a "ground rent"), the lessee undertaking to erect and maintain buildings on the land. At the end of the term the land, with the edifices upon it, reverts in fee simple to the legal representatives of the lessor.

BUILDINGS AND BUILDING LAND.

Annual value of (s. 21 of 16 & 17 Vict. c. 51). See "Annual Value."

In the case of building land the practice has been to arrive at the annual value on the basis of (*a*) the rent which the land would yield if leased for a term commencing from the testator's death; or (*b*) a yearly sum equal to 3 per cent. on the full saleable value (the usual practice); or (*c*) a perpetual annuity equivalent to the value of the property. See also "Agricultural Property."

BUILDING SOCIETY.

In the case of Building Societies it is provided by s. 29 of 37 & 38 Vict. c. 92, that a sum not exceeding £50 due to any member or depositor, dying intestate, may be paid as provided without a grant of representation being obtained.

Where property, the subject of a succession, is mortgaged to a building society, and the mortgage (capital and interest) is redeemable by instalments, the sum to deduct against Succession Duty is the sum which at the death would redeem the debt where Succession Duty is payable on the principal value, or a per centage on such sum where the duty is payable on the value of the successor's life interest.

BUSINESS

Cannot be carried on by executors or trustees without express authority (*Travis* v. *Milne*, 9 Ha. 142; *Kirkman* v. *Booth*, 11 Beav. 273); and then they can only employ therein the capital employed therein by testator himself at his decease; debts so incurred are primarily the debts of the executors or trustees, but they

BUSINESS—*continued.*

are entitled (in priority to testator's creditors) to be indemnified out of the estate to the extent of the assets authorized by the will to be employed therein. The beneficiaries can, where executor becomes bankrupt, prove only for assets employed in excess of authority (*Scott* v. *Izon*, 34 B. 434).

A gift of goodwill and business does not pass the capital or stock used in the business (*Delaney* v. *Delaney*, 15 L. R. Ir. 55).

A. bequeaths his share and interest in a business (which at the date of the will was one-third) to X.

The gift carries the whole business, where subsequently acquired (*In re Russell*, 19 Ch. D. 432).

Bequest of business to A. and B., successive tenants for life. Losses incurred during A.'s life must be made good out of profits earned during B.'s life and not out of the corpus (*Upton* v. *Brown*, 26 Ch. D. 588).

Where A., B., and C. have covenanted that they and their respective executors shall continue partners for a certain time, unexpired at the death of one of them (A.), A.'s executors are entitled to a decree of dissolution subject to their liability to damages recoverable in an action by B. and C. for a breach of the covenant (*Downs* v. *Collins*, 6 Hare. 418).

C.

CALCULATIONS.

Value of bequests for life or other limited period, see "Annuity."

Value of interest of successor in respect of devise, etc., in fee, in tail, for life, etc., see "Succession Duty."

Value of interest of successor in respect of future succession, see "Commutation."

Apportionments in cases of charges on Mixed Funds, see "Mixed Funds."

CALLS.

Calls on bank shares paid by executors, notwithstanding that the shares had been transferred into their names, were held in *Wishart's Executors* v. *Lord-Advocate* (*Galletly's Executors*) (18 Sco. L. R. 62), to be "debts due and owing from the deceased" within s. 23 of 5 & 6 Vict. c. 79, so as to entitle the executors to a return of Inventory Duty in respect of the amount so paid. They are at the death liabilities which subsequently ripen into debts, and form a deduction against **Estate Duty** as well as against **Probate Duty.**

Calls are specialty debts by statute (Companies' Act, 1862, ss. 75, 76).

A liability on shares is not a debt until a call has been made, and executors can therefore call on legatees to refund notwithstanding they paid over the legacies with notice of such liability (*Whittaker* v. *Kershaw*, 45 C. D. 320).

As to husband's liability for calls on his wife's shares, see s. 78 of the Companies Act, 1862. The ground of the decision in *Re West of England Bank*, 12 C. D. 284, where the husband was held liable as a contributory, was that s. 78 made the husband liable as debtor, not as the husband of the debtor.

There has been no decision as to whether the husband's liability has been taken away wholly or in part by the M. W. P. Act, 1882 (William's Executors, 9th ed., 1655).

Calls on railway shares made after death of testator must be paid by the specific legatee (*Day* v. *Day*, 1 Dr. & Sm. 261).

CAMPBELL'S ACT (LORD).

Moneys recoverable under this Act (9 & 10 Vict. c. 93) by the representatives of a deceased person are not liable to Probate Duty, or Estate Duty.

CANAL SHARES, when real property, see "Real Property."

CAPE OF GOOD HOPE—

Order in Council (Finance Act, 1894), passed August 13, 1895.

Death Duty imposed by "The Successions Duty Act, 1864," and "The Successions Duty Act Amendment Act, 1895," exempts property in the United Kingdom.

SCALE.

Lineals (descendants or ancestors)	1 per cent.
Brother or sister	2 „
Descendant of brother or sister	3 „
Other persons, or charities, etc.	5 „

The duty is payable in respect of any succession to property derived by disposition or devolution from any one as predecessor where the property is not immoveable property out of the Colony.

Exemptions.

1. Where the whole succession derived from the same predecessor is under £100.
2. Where the succession of a son or daughter is under £100.
3. Where the value of the succession is under £20.
4. Where the surviving spouse is successor, and derives from the deceased spouse.
5. Gifts to hospitals for the blind, deaf and dumb, lunatics, lepers, chronic sick, aged and poor.

CAPITA, PER—

All the beneficiaries in the following bequests *primâ facie* take *per capita*—

Gift to A. and the children of B.

Gift to the children of A. and B.

Gift to class A.

Gift to class B. and C.

Gift of two-fourths to the children of A. and the children of B.

In the two following gifts all the children and grandchildren coming into being before the period of distribution take *per capita*—

Gift to A., B., and C. and their issue.

Gift to the children and grandchildren of A. As to what indications of intention have been held sufficient to import a distribution *per stirpes*, see Theobald on Wills, 4th ed., p. 251 *et seq.*

Intestacy.

A. dies intestate. His three children B., C., D., all predeceased him, B. leaving two, C. three, and D. four children surviving A. All the grandchildren take *per capita* (Williams, 9th ed., p. 1368).

But according to Wickens, V.C., in *Re Ross's Trust*, L. R. 13 Eq. Cas. 286, and North, J., in *Re Nutt*, 37 C. D. 517, the descendants take the personalty *per stirpes*. Where, however, in the above example one or more of the children of A. survive him, the children of the deceased child or children take *per stirpes*.

CAVEAT.

A caveat is a warning in writing to the registrar not to issue a grant without giving notice to the caveator or his solicitor. The caveat remains in force for six months, but may be renewed from time to time for a further period of six months.

Before the person applying for the grant can proceed he must clear off the caveat by applying for a form of warning in the principal registry. This, signed by the registrar, is posted to the caveator, who must enter an appearance within six days if he wishes to still oppose the issue of the grant. In default, after an affidavit of service of the warning, etc., is filed the caveat is cleared off, and the application for the issue of the grant can proceed.

A. died on Aug. 2, 1879, having previously made a will which his executors proceeded to prove, and on Sept. 13, 1879, paid £45, the amount of the duty then payable. **A caveat being lodged** by the next-of-kin, the will was not established until April 13, 1880. Meanwhile the duty payable on or after April 1, 1880, was increased by the 43 Vict. c. 14.

Held, that the probate was liable to the increased duty (*Joy, In re ; Lalor* v. *Jones*, 5 L. R. Ir. 282).

CERTIFICATE OF FURTHER SECURITY.

Where, in grants of administration, the amount of the estate is increased, if the bond already given is not sufficient to cover the whole estate, including the increased amount, the administrator must give a further bond to cover the deficiency.

The certificate given by the registrar that this further security has been given is handed to the Examiner of the Corrective Affidavit in the Inland Revenue Department, when the additional duty is assessed.

S. 42 of 55 Geo. 3, c. 184, enacts that "in cases of Letters of Administration on which too little stamp duty shall have been paid at first, the said Commissioners of Stamps shall not cause the same to be duly stamped in the manner aforesaid **until the administrator shall have given such security** to the Ecclesiastical Court or Ordinary, by whom the Letters of Administration shall have been granted, as ought by law to have been given on the granting thereof, in case the full value of the estate and effects of the deceased had been then ascertained, and also that the said Commissioners of Stamps shall yearly, or oftener, transmit an account of the Probates and Letters of Administration upon which the stamps shall have been rectified in pursuance of this Act to the several Ecclesiastical Courts by which the same shall have been granted, together with the value of the estate and effects of the deceased upon which such rectification shall have proceeded.

CERTIFICATES AS TO THE PAYMENT OF DUTY, etc.

1. Estate Duty.

(*a*) *Of duty paid:*—

S. 9 (2), (3) of the Finance Act, 1894, enacts that—

(2) On an application submitting in the prescribed form the description of the lands or other subjects of property (whether hereditaments, stocks, funds, shares or securities), and of the debts and incumbrances allowed by the Commissioners in assessing the value of the property for the purposes of Estate Duty, the Commissioners shall **grant a certificate** of the Estate Duty paid in respect of the property, and specify the

CERTIFICATES AS TO THE PAYMENT OF DUTY, etc.—*continued.*

debts and incumbrances so allowed, as well as the lands or other subjects of property.

Form (*) of Application for a Certificate of the Payment of Estate Duty.

Official Reference :—Regr. . 189 . Fo. . Affdt. .

(†) of

died on the day of , 189 , and h Will was proved or Letters of Administration of h Estate were obtained, at the Registry of the Court of Probate on the day of , 189 .

An Inland Revenue Affidavit (or) Account dated the day , 189 , has been delivered by

The property described below was included therein at the value stated, and the Debts and incumbrances described below were allowed therein, at the values stated, as deductions against the gross principal value of the said property.

Application is hereby made by the undersigned to the Commissioners of Inland Revenue for a CERTIFICATE of the payment of the Estate Duty upon the said property.

Signature

Address

State how the applicant for this certificate is interested in the property }

Date , 189 .

Description of the lands or other subjects of property to which this Application relates.	Gross Principal Value. £	s.	d.	Description of the Debts and Incumbrances allowed by the Commissioners of Inland Revenue in assessing the value of the property for the purposes of Estate Duty.	Amount. £	s.	d.

(3) Subject to any repayment of Estate Duty arising from want of title to the land or other subjects of property, or from the existence of any debt or incumbrance thereon for which under this Act an allowance ought to have been but has not been made, or from any other cause, **the certificate** of the Commissioners **shall be conclusive evidence** that the amount of duty named therein is a first charge on the lands or other subjects of property after the debts and incumbrances allowed as aforesaid; provided that any such repayment of duty by the Commissioners shall be made to the person producing to them the said certificate.

(*b*) *Of value accepted* :—

S. 8 (8) enacts that—

The Commissioners on application from a person accountable for the duty on any property forming part of an estate shall, where they consider that it can conveniently be done, **certify the amount of**

(*) This form should be filled in, and be sent by post to the Controller of Legacy and Succession Duties, Somerset House, London, W.C.

† Insert name of Deceased, and fill in blanks.

CERTIFICATES AS TO THE PAYMENT OF DUTY, etc.—*continued.*

the valuation accepted by them for any class or description of property forming part of such estate.

(*c*) *Of discharge of persons paying Estate Duty.*

S. 11 of the Finance Act, 1894, enacts that—

1. The Commissioners, on being satisfied that the full Estate Duty has been or will be paid in respect of an estate or any part thereof, shall, if required by the person accounting for the duty, **give a certificate** to that effect, which shall discharge from any further claim for Estate Duty the property shown by the certificate to form the estate or part thereof, as the case may be.
2. Where a person accountable for the Estate Duty in respect of any property passing on a death applies, after the lapse of two years from such death, to the Commissioners, and delivers to them and verifies a full statement to the best of his knowledge and belief of all property passing on such death, and several persons entitled thereto, the Commissioners may determine the rate of the Estate Duty in respect of the property for which the applicant is accountable; and on payment of the duty at that rate, that property and the applicant, so far as regards that property, shall be discharged from any further claim for Estate Duty, and the Commissioners shall **give a certificate** of such discharge.
3. A certificate of the Commissioners under this section shall not discharge any person or property from Estate Duty in case of fraud or failure to disclose material facts, and shall not affect the rate of duty payable in respect of any property afterwards shown to have passed on the death; and the duty in respect of such property shall be at such rate as will be payable if the value thereof were added to the value of the property in respect of which duty has been already accounted for.
4. Provided, nevertheless, that **a certificate** purporting to be a discharge of the whole Estate Duty payable in respect of any property included in the certificate, shall exonerate a *bonâ fide* purchaser for valuable consideration, without notice, from the duty, notwithstanding any such fraud or failure.

(*d*) *Under section* 30 *of* 44 *Vict. c.* 12 (*Customs and Inland Revenue Act*, 1881), *s.* 8 (17) *of the Finance Act*, 1894, *enacts that*—

The form of certificate required to be given by the proper officer of the Court under s. 30 of the Customs and Inland Revenue Act, 1881, may be varied by a rule of Court in such manner as may appear necessary for carrying into effect this Act.

S. 30 of the Customs and Inland Revenue Act, 1881 (44 & 45 Vict. c. 12), is as follows:—

No probate or letters of administration shall be granted by the Probate, Divorce, and Admiralty Division of the High Court of Justice in England, or by the Probate and Matrimonial Division of the High Court of Justice in Ireland, unless the same bear a certificate in writing, under the hand of the proper officer of the Court, showing that the affidavit for the Commissioners of the Inland Revenue has been delivered, and that such affidavit, if liable to Stamp Duty, was duly stamped, and stating the amount of the gross value of the estate and effects shown by the account.

The following rule of Court has been issued:—

CERTIFICATES AS TO THE PAYMENT OF DUTY, etc.—*continued.*

"The number of the rule for the Principal Registry is 106; and for the District Registries, 101.

"The certificate required to be given by the proper officer of the Court, under s. 30 of the Customs and Inland Revenue Act, 1881, shall, for the purposes of the Finance Act, 1894, and subject to any necessary variations and modifications, which the officer of the Court is hereby authorized at his discretion to make, be in the form following:—

"And it is hereby certified that an affidavit for Inland Revenue has been delivered, wherein it is shown that the gross value of the personal estate of the said deceased within the United Kingdom (exclusive of what the deceased may have been possessed of or entitled to as a trustee and not beneficially) amounts to £ , and that it appears by a receipt signed by an Inland Revenue officer on the said affidavit that £ , for Estate Duty and interest thereon has been paid, the duty being charged at the rate of £ per cent."

It has been ordered; (i.) that where the fixed duty under s. 16 (1) is paid on the affidavit, the concluding words of the certificate are to be "and that the said affidavit bears a stamp of £1 10*s.*" [or £2 10*s.* as the case may be]; (ii.) that when the affidavit bears a duty-paid stamp, the concluding words are to be "and that the said affidavit bears a duty-paid stamp"; and (iii.) that if the grant is issued in respect of trust property only, the certificate is to be varied by striking out the reference to trust property, and adding after the amount of the estate the words "in respect to which the deceased was trustee only."

(*e*) *Where Estate Duty commuted.*

S. 12 enacts that on "the receipt of such sum (the commuted duty on an interest in expectancy), they (*i.e.* the Commissioners) shall give a **certificate of discharge** accordingly."

(*f*) *No charge for Certificate.*

"No charge shall be made for any certificate given by the Commissioners under this Act" (Finance Act, 1894, s. 8 (15)).

2. **Probate Duty.**

Probates and letters of administration now bear a **certificate** in lieu of Stamp Duty.

Form of certificate given by the Court:—

"And it is hereby certified that an affidavit in verification of the account of the said estate has been delivered duly stamped, wherein it is shown that the gross value of the estate amounts to £ and no more."

The amount of the stamp is usually noted in the margin of the probate, etc.

Where Temporary Estate Duty is payable by reason of the value of the estate and effects (in respect whereof duty is charged on the affidavit or inventory by s. 27 of 44 Vict. c. 12) exceeding £10,000, a statement of the value of such estate and effects must be delivered with such affidavit or inventory, and a certificate that such statement has been delivered is endorsed on the grant.

3. **Legacy Duty.**

The proper evidence of payment of duty is the stamped receipt (36 Geo. 3, c. 52, s. 27).

The copy of an entry in the books at the office of payment of Legacy Duty is sufficient evidence of the fact of payment if proved in a regular way by a

CERTIFICATES AS TO THE PAYMENT OF DUTY, etc.—*continued.*

person who has himself compared it with the original; a copy only signed by the Controller is not evidence (*Harrison* v. *Borwell*, 10 Sim. 380); but in the case *E. of Howe* v. *E. of Lichfield* (L. R. 2 Ch. App. 55) it was held that a letter from the Controller of Legacy and Succession Duties is sufficient evidence of payment of Legacy or Succession Duty.

By 43 Vict. c. 14, s. 12, an executor, administrator, or trustee, is now entitled to a **certificate** discharging him from his liability to any duty "in respect of any fund in his hands which he intends to distribute," after giving notice in writing to the Commissioners of the particulars of the fund.

The printed form of certificate in use, when **money**, the subject of a legacy, is **paid into Court**, after deduction of the duty, is to be obtained on application at the Legacy and Succession Duty Office. Form No. 0282, see s. 32 of 36 Geo. 3, c. 52. See "Payment into Court."

4. **Succession Duty.**

A certificate of payment of Succession Duty may be obtained by persons interested in property affected by the duty so paid (16 & 17 Vict. c. 51, s. 51; 38 & 39 Vict. c. 87, s. 18, Land Transfer Act; 43 Vict. c. 14, s. 12, *supra*).

See also "Land Transfer Act, 1897."

CESSER of determinable charges.

Succession Duty (ss. 5, 20 of 16 & 17 Vict. c. 51).

Where any property shall at or after the time appointed for the commencement of this Act be subject to any charge, estate, or interest determinable by the death of any person, or at any period ascertainable only by reference to death, **the increase of benefit accruing** to any person or persons upon the extinction or determination of such charge, estate, or interest shall be **deemed to be a succession** accruing to the person or the persons, if more than one, then entitled beneficially to the property or the income thereof, according to his or their respective estates or interests therein, or beneficial enjoyment thereof; and the person or persons from whom such successor or successors respectively shall have derived title to the property so charged, shall be deemed to be the predecessor or predecessors, as the case may be.

Where the charge or interest in favour of B. for life was created by A. entitled in possession, no duty is payable on B.'s death, for A. is here both successor and predecessor (s. 12).

Also where an annuity has been charged by will on real estate in aid of the personal estate, but a deduction of the value of the annuity has been taken in the residuary account, no Succession Duty is payable on the determination of the annuity.

The extinction by death of annuitant of a life annuity created before May 19, 1853, and charged on property which prior to that date had become vested in the heir or devisee of the last preceding owner, will confer a succession on such heir or devisee, being an "increase of benefit" within s. 5 (*Lord-Advocate* v. *Macdonald*, 24 Sco. Sess. Ca. 2nd Ser. 1175 (annuity)).

See also *Harding* v. *Harding*, 2 Giff. 597, 7 Jur. N. S. 906 (dower).

Cessers of determinable charges are to be regarded as part of the original successions, payment of which is deferred (*a*) under s. 20 of 16 & 17 Vict. c. 51,

(*a*) Where, however, the successor himself created the outstanding interest he cannot defer the payment of duty, unless he thereby conferred a new succession on the donee, who will then be liable to pay duty (s. 2), in respect of the interest thus created, and on

CESSER—*continued.*

which provides that Succession Duties are to be paid on the successor becoming entitled in possession, but in the case of outstanding interests, on the determination thereof (see *Attorney-General* v. *Mander*, 44 W. R. 413). Cessers, therefore, of leases for lives or for years terminable on lives or cessers of jointures, rent-charges, dower, and other annuities for life, were not liable to the ADDITIONAL rates imposed by s. 21 of 51 Vict. c. 8, unless of course the original succession took effect after July 1, 1888.

Examples.

A. conveys, by way of *bonâ fide* sale, certain real estate to B., in consideration of B.'s paying him an annuity during his (A.'s) life. On A.'s death there is no taxable benefit to B. under this section; but it may be necessary to show that at the date of the transaction, the annuity, having regard to the then age of A., was equal in value to the saleable value of the property in the open market.

Realty is devised by A. to B., subject to an annuity charged thereon in favour of C. for life.

On the death of C., B. pays duty in respect of the cesser of the annuity (s. 5). Where, however, B., having predeceased the annuitant, has devised the realty upon trust to sell, and the same has been sold subject to the annuity, no duty is payable under B.'s estate in respect of the cesser on the death of C.

£2000 is settled by A., by voluntary settlement, upon trust to pay thereout annuity of £100 to A. for life, and subject thereto to B.

On A.'s death B. pays duty on the value of an annuity in perpetuity (Table III., ninety-five years certain) (s. 7), which provides that dispositions accompanied by the reservation of a benefit to the grantor, etc., "shall be deemed to confer at the time appointed for the determination of such benefit an increase of beneficial interest in such property, as a succession equal in annual value to the yearly amount or yearly value of the benefit so reserved, assured, or contracted for, on the person in whose favour such disposition shall be made." Where the value of the cesser in perpetuity exceeds the value of the fund out of which the annuity is payable, then duty is only payable on the value of the fund itself.

Estate Duty (Finance Act, 1894, s. 7 (7)).

The value of the benefit accruing or arising from the cesser of an interest ceasing on the death of the deceased shall—

(*a*) If the interest extended to the whole income of the property be the principal value of that property; and

(*b*) If the interest extended to less than the whole income of the property, be the principal value of an addition to the property equal to the income to which the interest extended.

Examples.

1. A. has a life interest in £5000. On A.'s death the *corpus* is taxable with Estate Duty which comes out of the fund. This fund, however, where

its determination the original successor will pay duty (s. 5) on the increase of benefit thereby accruing to him.

So that when an expectant successor (S.) charges his estate with an annuity in favour of his mother (M.) for life, so as to confer a new succession, M. pays duty on the annuity, and S. in paying duty is entitled to a *pro tanto* deduction from the subject of his succession in respect of such annuity, he paying "duty upon the increased value of his estate when the annuity ceases" (*Re Peyton*, 7 Hurlst. & Norm. 265).

CESSER—*continued.*

it passes on A.'s death to a member of his "family" (wife, child, etc.), is aggregable with any other aggregable property passing on his death.

2. Where a fund is £10,000, producing an income of £300 a year, and there is by A.'s death the cesser of an annuity of £150 payable thereout, the Estate Duty is payable on £5000 which at 3 per cent. would produce an annuity of £150.

Where, by the death of "the deceased" there is a "cesser" of an interest in property, but by the same death another interest in it of the same (or of a greater) annual value for the life of another person, arises, then the property which "passes," or is "deemed to pass," in respect of which Estate Duty is leviable, is considered as affected by s. 1 only of Finance Act, 1894, and as being of the value of an annuity equal to the new annual value for the life of the person taking it, who is also liable to account for, and pay the Estate Duty in respect of such value.

CEYLON.

Order in Council (Finance Act, 1894), passed May 11, 1895.

Death Duty, imposed by "The Stamp Ordinance, 1890," payable on property in the possession (moveable and immoveable) in respect of which grant made—

	Scale.
Under Rs. 1000 ..	.. Nil.
Rs. 1000 and upwards	.. 1½ per cent. on every Rs. 100, or fraction thereof.

Mortgage and notarial bond debts may be deducted in the first instance, and a return of duty (less 5 per cent. discount) may be subsequently obtained in respect of debts payable by law out of the estate, and actually paid.

CHANCERY, COURT OF.

1. Where the proceeds of real estate, devised upon trust to sell, are directed to be invested in the purchase of other real estate, but which, not being so invested, are by order of the Court applied for the benefit of the person who would have been absolutely entitled to the land if purchased, there is no conversion (*Mules* v. *Jennings*, 8 Exch. Rep. 830).
2. Where real estate was sold by order of the Court, and for purposes unconnected with the trust, Legacy Duty was held not to be payable, and this, notwithstanding the will contained a power to sell (*Re Evans*, 2 C. M. & R. 206).

☞ See also "Conversion."

3. The Court of Chancery and County Courts are to provide for payment of duty in respect of property which is the subject of an administration suit, see 36 Geo. 3, c. 52, s. 25 (The Legacy Duty Act); and 16 & 17 Vict. c. 51, s. 53 (The Succession Duty Act). However, the pendency of a suit does not relieve executors from their liability (ss. 6 and 25 of 36 Geo. 3, c. 52) for an account of the duty upon any legacies which they have paid.
4. Where property is administered by the Court, duty is payable on all that the legatees receive (*Thomas* v. *Montgomery*, 3 Russ. 502). See also "Administration Suit"; "Payment out of Court."

CHANNEL ISLANDS.

Property in, not liable to Probate Duty.

CHARGE OF DEBTS. See "Debts."

CHARGES ON REAL ESTATE.

Legacies so charged and liability to Legacy Duty (45 Geo. 3, c. 28, ss. 4, 5).

An appointment and charge by deed of a rent-charge in pursuance of a limited power in a will is a legacy (*Attorney-General* v. *Pickard*, 3 M. & W. 552). See "Powers."

Legacies or moneys payable out of or arising from the sale and mortgage of real estate, where the person charging dies on or after July 1, 1888, are taxable as successions to personalty (s. 21 of 51 Vict. c. 8); they, however, remain "legacies," and all the laws incidental to legacies attach to them.

Succession Duty at the higher rates ($1\frac{1}{2}$, $4\frac{1}{2}$, $6\frac{1}{2}$, $7\frac{1}{2}$, $11\frac{1}{2}$ per cent.), and not Legacy Duty at the lower rates (1, 3, 5, 6, 10 per cent.), is payable where the testator dies before July 1, 1888, and a tenant-for-life (donee of a power to charge the realty with portions for the benefit of his younger children) of certain real estate dies after that date, having exercised the power. But see "Exemptions."

Where, however, the testator charged and the tenant-for-life could only appoint, Legacy Duty at the lower rates would in such a case be payable.

Where the real estate is situate abroad, a legacy charged thereon is not liable to duty.

Where, however, the legacy is bequeathed to different persons in succession, and the money having been raised is invested in this country, Succession Duty will be payable on the invested fund on the death of the tenant-for-life, see "Domicile."

NOTE.—The personal estate is the primary fund for the payment of debts and legacies, and to charge the real estate it is not only necessary that the real estate should be exonerated, but that the personal estate must be in terms or by implication exonerated (*White* v. *White*, 2 Vern. 43; *Kilford* v. *Blaney*, 29 Ch. D. 145), see "Mixed Funds."

Where a charge on real estate is paid off by a tenant-for-life, or a remainderman in tail, whose estate may be altogether defeated, or a tenant-in-tail whose estate is subject to an executory devise over, it will be presumed that he meant to keep it alive, unless there is evidence to the contrary (St. Eq. ss. 486, 487, 488). Money belonging to a testator which remains charged on his own real estate is liable to Probate Duty (*Swabey* v. *Swabey*, 15 Sim. 502).

Devise of real estate to A., subject to a charge in favour of B.

(*a*) The devise is revoked. The charge does not fail.

(*b*) The devisee predeceases the testator. The charge does not fail.

(*c*) The charge fails. The charge sinks for the benefit of A. (*Attorney-General* v. *Milner*, 3 Atk. 112). If, however, the real estate is not expressly charged, but A. is directed to pay a certain sum, there would be a resulting trust (*Arnold* v. *Chapman*, 1 Ves. Sen. 108).

A distinction is made where the charge is created by the will and where the testator as donee of a power to charge created by a prior instrument exercises such power by will. In the latter case, if the disposition by the will fails the charge is nevertheless raisable (*Simmons* v. *Pitt*, 8 Ch. 978).

As to vesting of Charges on Land, see "Vesting." See also "Debts," "Jointure Rent Charge," "Portions."

CHARGE OF DUTY ON PROPERTY.

1. *Estate Duty.*

Section 9 (1) of the Finance Act, 1894, enacts that—

CHARGE OF DUTY ON PROPERTY—*continued.*

A rateable part of the Estate Duty on an estate, in proportion to the value of any property which does not pass to the executor as such, shall be a **first charge on the property** in respect of which duty is leviable; provided that the property shall not be so chargeable as against a *bonâ fide* purchaser thereof for valuable consideration without notice.

The executor, who has paid such duty, can **enforce the charge** (of duty, and interest, and expenses properly paid or incurred by him in respect thereof) on the property, by the **sale, mortgage** of or a **terminable charge** on the property or any part thereof (s. 9 (5)); and s. 9 (4) gives him a personal remedy against the trustees or owners of the property.

And where the duty is paid by the tenant-for-life (or other limited owner) he is by s. 9 (6) entitled to the like charge "as if the Estate Duty in respect of that property had been raised by means of a mortgage to him."

Such charge would take priority of incumbrances disallowed under s. 7 (1).

The duty on Real Estate sold under a trust for that purpose shifts to the proceeds.

But Estate Duty is not a charge upon property passing to the executors as such, the duty being payable out of the general residue.

See *In re Culverhouse, Cook* v. *Culverhouse* (1896), 2 Ch. 251, where it was held that the Estate Duty on leaseholds (which vest in the executor *virtute officii*) is payable out of the general estate and not by the specific legatee.

See also *In re Fish*, Ch. D. July 13, 1897, "Law Times," July 17, 1897, as to interest on specific bequest of leaseholds being also payable out of residue. Finance Act, 1894, s. 6 (6), 8 (10).

"Real Estate" (as defined by the Land Transfer Act, 1897) now vests in the executor or administrator of a person dying on or after Jan. 1, 1898; but s. 5 of the Act provides that "nothing in this part of this Act shall affect any duty payable in respect of real estate or impose on real estate any other duty than is now payable in respect thereof."

Where A. covenants to pay to the trustees of his daughter's marriage settlement a capital sum at his death, the debt cannot under the provisions of s. 7 (1 *a*) be deducted against Estate Duty, and the duty thereon comes out of the general residue. *In re Gray, Gray* v. *Gray* (1896), 1 Ch. 620. It was held in *Re Bourne* (1893), 1 Ch. 188, that the Temporary Estate Duty was also payable out of residue.

Settlement Estate Duty was similarly held to be payable out of residue (*Re Webber* (1896), 1 Ch. 914); but by the Finance Act, 1896, s. 19, it has been enacted—

(1) The Settlement Estate Duty leviable in respect of a legacy or other personal property settled by the will of the deceased shall (unless the will contains an express provision to the contrary) be payable out of the settled legacy or property in exoneration of the rest of the deceased's estate.

(2) The Settlement Estate Duty leviable in respect of any such legacy or property shall be collected upon an account setting forth the particulars of the legacy or property, and delivered to the Commissioners by the executor within six months after the death, or within such further time as the Commissioners may allow.

This section, in practice, is held to apply where the deceased died on or after July 1, 1896.

As to recovery of rateable portion of Estate Duty on property from persons "entitled to any sum charged on such property (whether as capital or as annuity

CHARGE OF DUTY ON PROPERTY—*continued.*

or otherwise) under a disposition not containing any express provision to the contrary," see "Apportionment."

II. *Succession Duty.*

Succession Duty is a first charge on the interest of the successor, and of all persons claiming in his right, in all the real property in respect whereof such duty shall be assessed; and such duty shall also be a first charge on the interest of the successor in the personal property in respect whereof the same shall be assessed, while the same shall remain in the ownership or control of the successor or of any trustee for him, or of his guardian or committee, or tutor or curator, or of the husband of any wife who shall be the successor" (s. 42 of the Succession Duty Act, 1853).

And the Finance Act, 1894, s. 18 (1), makes the duty (where the deceased dies after Aug. 1, 1894, and the successor is competent to dispose of the property) a charge upon the principal value, arrived at "after deducting the Estate Duty payable in respect thereof on the said death, and the expenses, if any, properly incurred of raising and paying the same."

As to limitation of charge, see "Limitations."

"Nothing in this Act shall be held to create a charge for Estate Duty on any property situate in a British possession while so situate . . . " (s. 20 (2)).

CHARITIES, GIFTS TO.

Charitable bequests are liable to Legacy Duty at the rate of 10 per cent. (*Re Parker*, 4 Hurlst. & Norm. 666).

Duty is not claimed, in practice, on the widow's death where a charitable fund has been subscribed and settled upon the widow and children of a deceased person.

Charitable successions are liable to Succession Duty at the rate of 10 per cent.

See *Lord-Advocate* v. *Marshall*, 30 Sco. Law Rep. 599.

The duty so chargeable is apparently to be raised and paid at once, there being no provision similar to that in s. 27, in respect to successions taken by corporations, as to its payment by instalments.

By 56 Geo. 3, c. 56, sch. 3, and 5 & 6 Vict. c. 82, s. 38, "Any legacy given for the education or maintenance of poor children in Ireland, or to be applied in support of any charitable institution in Ireland, or for any purpose merely charitable" is exempt from duty.

"To bring the legacy within the statute, the legacy must be given for a charitable purpose in Ireland. There must be a clear intention manifested upon the face of the will that the purpose should be effectuated here, and there must be an obligation upon the trustees to apply the money in Ireland. It is not sufficient that an application of the money in Ireland would satisfy the bequest," per Palles, C.B., in *Attorney-General* v. *Delaney*, Ir. R. 10 C. L. 131.

However, the terms "merely charitable" do not import that the gift must be purely for the relief of the poor, but are sufficient to include the case of a legacy which the testator bequeathed to be disposed of by his executors towards charitable purposes, or for the promotion of art and industry in Ireland, and which was declared by the Court of Chancery to be a valid charitable bequest and was accordingly disposed of by a scheme sanctioned by the Court in the institution of a perpetual endowment of the students of the fine arts in Ireland (*Attorney-General* v. *Bagot*, 13 Ir. C. L. R. 48).

On the other hand, a gift for a religious, or for any other purpose, to be charitable within the statute of Elizabeth must, to some extent at least, be in the nature

CHARITIES, GIFTS TO—*continued.*

of a general public use. It must be of such a nature that the Court can determine that its execution shall confer a benefit upon the public or upon some section of the public. Per Chief Baron Palles in *Attorney-General* v. *Delaney*, Ir. R. 10 C. L. 126 (Hanson on Death Duties, 4th ed., 521).

A bequest for the promotion of art in Ireland was held to be within the exemption (*Attorney-General* v. *Bagot*, 13 Ir. C. L. R. Exch. 48, 14 Ir. Jur. 32); but not so bequests for charitable purposes in England by a testator dying domiciled in Ireland (*Attorney-General* v. *Hope's Executors*, 2 Ir. C. L. R. 368); nor a bequest by a parish priest in Ireland of "all my property and money to the poor." The assets were all in Ireland, and the will was proved there; but the will did not express that the charitable purpose was to be restricted to Ireland. To bring a legacy for a purpose merely charitable within the exemption from Legacy Duty, it must appear by the will itself that the charitable purpose is to be restricted to Ireland (*Kenny* v. *Attorney-General*, 11 L. R. Ir. (Ch.) 253).

The above exemption does not extend to legacies absolute on the face of the will, but bound by a secret trust for charitable purposes (*Cullen* v. *Attorney-General*, L. R. 1 H. L. 190).

Legacies for masses, not being a public benefit, are not within the exemption and are chargeable to duty at the rate of 10 per cent. (*Attorney-General* v. *Delaney*, 10 Ir. C. L. R. 104; *Attorney-General* v. *Tuomey*, 21 L. R. Ir. 480).

Legacies of this nature are void in England. See "Masses."

Unless an intention can be gathered from the will that the assets are to be marshalled, the Court will not marshal the assets so as to cast the debts upon the impure personalty, and charitable legacies must abate in the proportion of the pure to the impure personalty; and where a testator directed certain legacies to charities to be paid out of pure personalty and all his legacies to be paid duty free, the charitable legacies were held to be exonerated from duty only in the proportion in which the residue consisted of pure personalty (*Jarman, In re, Leavers* v. *Clayton*, 8 Ch. D. 584). See also *Wilkinson* v. *Barber*, L. R. 14 Eq. 96.

A direction to expend money in erecting a monument is not a charitable legacy; but bequests to restore the fabric or the ornaments within a church are charitable (*Hoare* v. *Osborne*, L. R. 1 Eq. 585).

A very important amendment of the law of charitable uses has been effected by the Mortmain and Charitable Uses Act, 1891 (54 & 55 Vict. c. 73). Prior to this Act a devise of land and a gift by will of impure personalty (for example, estates and interests in land; charges on land and money to be laid out in land which as savouring of the realty had been held to be within the Act of 9 Geo. 2, c. 36, see *Attorney-General* v. *Meyrick*, 2 Ves. 44) for any charitable purpose (with a few special exceptions) were void.

Now, however, by the new Act land may be devised for any charitable purpose, though it must be sold within one year from the death of the testator (s. 5), unless this time is enlarged by the High Court or a judge thereof, or the Charity Commission.

The Act of 1891, which was intended to prevent alienations to charities while permitting charities to benefit by the intentions of testators (*In re Hume, infra*), is not to be read along with the Act of 1888, which was intended to regulate the conditions under which land might be alienated to charities or in mortmain.

The Mortmain and Charitable Uses Acts have no application to Ireland, nor had the

CHARITIES, GIFTS TO—*continued.*

preceding Acts repealed by them. The law there is regulated by the Charitable Donations and Bequests (Ireland) Act, 1844 (7 & 8 Vict. c. 97). By s. 16 of that Act no donation, devise, or bequest for pious or charitable uses shall be valid to create or convey any estate in lands for such uses, unless the deed, will, or other instrument containing the same shall be executed three months at least before the death of the person executing the same, and unless every such deed or instrument, not being a will, be registered within three months of its execution.

By altering the definition of land in the Mortmain Act of 1888 (which Act repealed and substantially re-enacted the Statute of Mortmain, 9 Geo. 2, c. 36), land is made to include leaseholds, but all other personalty is placed in the position formerly held by pure personalty, thus permitting it to be disposed of by any mode of disposition for charitable purposes (s. 3). The Act also enacts that personal estate by will, directed to be laid out in land for any charitable purpose, shall be held on trust for the charitable purpose as though there had been no direction to lay it out in land (s. 7).

Where by a will (dated before but taking effect after the passing of the 1891 Act) the testator bequeathed his residue upon trust to pay "such part of my residuary trust estate which by law may be given for charitable purposes," to a charity, it was held that the whole residue passed under the gift (*In re Bridger; Brompton Hospital for Consumption* v. *Lewis*, (1893) 1 Ch. 44: (1894) 1 Ch. 297.

The Act also applies to gifts in remainder, as a future interest in land may be sold under the Act (*In re Hume, Forbes* v. *Hume*, 72 L. T. 68).

Charities are favoured by law in the following respects:—

1. A testator's general charitable intention will be carried into effect by the Court, provided the object be in fact charitable.
2. The doctrine of *cy-près* will be applied where "testator has manifested a general intention to give to a charity;" but not, however, where the testator had a specific object in view (*Clark* v. *Taylor*, 1 Drew, 642; *In re Randell, Randell* v. *Dixon*, 38 Ch. D. 213).

   Where a legacy is given to a charity which survives the testator, but afterwards, and before receipt of the legacy, is dissolved, the legacy will be applied *cy-près;* otherwise where the charity is dissolved in the testator's lifetime, unless "testator has manifested a general intention to give to a charity" (*In re Slevin, Slevin* v. *Hepburn*, 1891, 2 Ch. 236).
3. The Court will supply all defects in conveyances.
4. Where there is a general charitable intention there is no resulting trust of surplus to representatives of donor, even where excess of income arises, the original income being all given (*Thetford School Case*, Cases and Reports, 130 *b.*).
5. Charities are not within the rule against perpetuities.
6. Voluntary conveyances to charities are good notwithstanding 27 Eliz. c. 4.

Charities are treated on a level with private individuals in certain respects, viz.:—

1. Want of a trustee or executor is supplied.
2. Lapse of time is a bar; but see sub-s. 2 of s. 25 of Judicature Act, 1873 (*Attorney-General* v. *Christ's Hospital*, 3 My. & K. 344); Trustee Act, 1888, s. 8 (*Magdalen College* v. *Attorney-General*, 6 Ho. Lds. Cas. 189).
3. In the case of a gift upon trust for charitable (legal) and other (illegal) purposes —if capable of severance—the Court will uphold the charitable gift to the

CHARITIES, GIFTS TO—*continued.*

extent of the proportion of the properties ascertained to be attributable to the charitable purposes.

Respects in which charities are less favoured than individuals :—

1. Assets are not marshalled in favour of charities unless testator so directs. As to discretionary gifts to executors, see *Broadbent* v. *Burrow*, 31 Ch. D. 113. And see Mortmain and Charitable Uses Act, 1891 (*supra*). As regards wills of testator dying on or after Aug. 5, 1891, there is no necessity for marshalling in the case of charitable legacies.
2. Gifts for superstitious uses, for example, for saying MASSES for the dead, etc., are not allowed to be valid (*Heath* v. *Chapman*, 2 Dr. 417).

CHATTELS.

Bequest of, to go as heirlooms. See "Heirlooms."

Chattels real pass to the executor, and not to the heir.

Chattels (real and personal), in default of next-of-kin, pass to the Crown. See "Escheat."

Chattels real of married women. See "Married Women's Property."

Consumable articles (things *quæ ipso usu consumuntur*) cannot be given over unless they form part of a stock-in-trade, and even here, where the tenant-for-life is not to be liable for depreciation, he takes absolutely (*Breton* v. *Mockett*, 9 Ch. D. 95).

Bequest of chattels in a house will pass furniture not attached to the freehold, plate, linen, bank notes, and ready money, but not choses in action, such as bonds or securities for money in the house, which are considered not property in the house, but evidence of title to property elsewhere (*Green* v. *Symonds*, 1 B. C. C. 139).

Settled chattels and Estate Duty.

Where any lands or chattels are so settled, whether by Act of Parliament or royal grant, that no one of the persons successively in possession thereof is capable of alienating the same, whether his interest is in law a tenancy for life or a tenancy in tail, the provisions of this Act with respect to settled property shall not apply, and the property, passing on the death of any person in possession of the lands and chattels shall be the interest of his successor in the lands and chattels, and such interest shall be valued, for the purpose of Estate Duty, in like manner as for the purpose of Succession Duty (s. 5 (5), Finance Act, 1894).

S. 20 (1) of Finance Act, 1896, enacts that—

Where any property passing on the death of a deceased person consists of such pictures, prints, books, manuscripts, works of art, scientific collections or other things not yielding income as appear to the Treasury to be of national, scientific, or historic interest, and is settled so as to be enjoyed in kind in succession by different persons, such property shall not, on the death of such deceased person, be aggregated with other property, but shall form an estate by itself, and, while enjoyed in kind by a person not competent to dispose of the same, be exempt from Estate Duty, but if it is sold or is in the possession of some person who is then competent to dispose of the same, shall become liable to Estate Duty.

Instructions on the subject by the Treasury to the Commissioners of Inland Revenue (*Times*, May 29, 1897).

"My Lords consider that this exemption was intended to apply not to collections as a whole but to particular works of art, which are of such

CHATTELS—*continued.*

national or historic interest that they would be purchased or accepted as a bequest by one of the national collections, and they agree with the suggestion that, before reporting to the Treasury that any particular works of art fall within this definition, you should cause them to be examined by an expert appointed by you, and that you should invite the opinion of the Trustees of the National Gallery or of the National Portrait Gallery on his report, according as the works are represented to be of national or of historic interest. The cost of the expert's inspection should be borne by the executors of the testator's will, and the same rule should apply if the trustees of either gallery find it necessary to send some one to look at the works on their behalf before endorsing the opinion of your expert. In deciding the question whether a picture or series of pictures are of historic interest, my Lords consider that the term may properly be held to cover pictures which, though of moderate artistic merit, directly illustrate the history of a country or of a country family of historical importance. Their Lordships agree with your suggestion that, pending the decision of the Treasury on the question whether the whole or any part of a bequest falls within the exemption of s. 20 [Finance Act, 1896], the executors should proceed with the valuation of the estate, excluding the works of art, which are in question for consideration later on, but entirely without prejudice."

CHEQUE.

There may be a valid *donatio mortis causâ* of a cheque of a third person which is payable to bearer or order, and, if to order, although not indorsed, but not of donor's own cheque [a cheque being nothing more than an order for the delivery of a certain sum of money, which order is revoked by the death of the drawer], unless cashed or otherwise negotiated in his lifetime. If, however, donee presents the cheque after donor's death, and the bankers, in ignorance of the death, cash the cheque, the donee can retain the money (*Tate* v. *Hilbert*, 4 Bro. C. C. 286); and where presented before the death, and the bankers refuse payment, being doubtful as to the drawer's signature, the donee can claim from the personal representatives on the donor's death (*Bromley* v. *Brunton*, L. R. 6 Eq. 275).

CHILDREN, GIFTS TO.

(*a*) Children, and their descendants, were first charged with Legacy Duty by 45 Geo. 3, c. 28.

(*b*) Children, and their descendants, are chargeable to Legacy Duty at the rate of 1 per cent. (55 Geo. 3, c. 184, sch., Part III.), and to Succession Duty at the rate of 1 per cent. (s. 10 of 16 & 17 Vict. c. 51) and 1½ per cent. (s. 21 of 51 Vict. c. 8), the latter rate being imposed in respect of successions opening on or after July 1, 1888.

They are, however, exempt from Succession and Legacy Duty—

(1) in respect of personal property upon which Stamp Duty has been paid (44 Vict. c. 12, s. 41) where the grant has been taken out, or account delivered, on or after June 1, 1881; and

(2) in respect of real and personal property upon which Estate Duty has been paid where the deceased died after Aug. 1, 1894 (Finance Act, 1894, s. 1).

The husband or wife of a child is chargeable to the same rate of duty as the

CHILDREN, GIFTS TO—*continued.*

child (16 & 17 Vict. c. 51, s. 11, as to Succession Duty; Treasury Minute of June 3, 1857, as to Legacy Duty).

The 1 per cent. is now payable (where the deceased died before Aug. 2, 1894).

1. Where the grant was taken out before June 1, 1881;
2. Where the grant has been taken out since June 1, 1881, in respect of foreign personalty, and charges upon realty (the duty, in this latter case, being 1½ per cent. where the testator died after July 1, 1888, see "Charges on Real Estate").

(*c*) Gifts to children, who predeceased testator, leaving issue, do not lapse, see "Lapse."

(*d*) *Construction of gifts to children in certain cases.*

1. A gift to children *primâ facie* means LEGITIMATE children (as to when illegitimate children take, see "Illegitimacy"), and does not include grandchildren; but the children of a former marriage (and also of a subsequent marriage) will take in the absence of a contrary intention (*Lovejoy* v. *Carter*, 35 Beav. 149). And in the case of a gift to the children of a deceased person who has only grandchildren living at the time of the gift, the grandchildren will take (*Berry* v. *Berry*, 3 Giff. 134).
2. A gift to children "hereafter to be born" will not without more exclude children already born (*Hebblethwaite* v. *Cartwright*, Cas. temp. Talbot, 31).
3. A gift to "children who survive me" will not exclude those born after testator's death (*Re Clarke*, 3 De G. J. & S. 111).
4. An express gift to A. (child) will not prevent his taking under a subsequent gift to children (*Reay* v. *Rawlins*, 29 Beav. 88).
5. In a gift to the children of A. and B., *primâ facie*, B. and the children of A. are entitled (*In re Featherstone's Trusts*, 22 Ch. D. 111); but see Theobald on Wills, 4th ed., 249 *et seq.*
6. **Gifts to children as a class:—**

Under an immediate gift to the children of A., or of the testator, those in existence at the testator's death, including a child *en ventre sa mère*, (*a*) will take, but where the will clearly shows that testator intended only those to take who came under the description at the date of the will, such intention will be carried into effect (*Viner* v. *Francis*, 2 Cox, 190).

Gift to the children of A. to be paid at 21; or to such of the children of A. as shall attain 21:—

Where the gift is of the *corpus*, the class to take is fixed at the testator's death, where one (or more) of the children has attained 21 in the lifetime of the testator; otherwise all children born at the testator's death, and coming into *esse* before the eldest attains 21, will take. Where, however, the gift is of the INCOME, the class is not ascertained until the last child attains 21 (*Re Wenmoth*, 37 C. D. 266).

(*a*) *En ventre sa mère.*

Where the distribution of a fund is to be made when the youngest child for the time being attains 21, the division will not be deferred by reason of there being a child *en ventre* when the youngest attains 21 (*Blasson* v. *Blasson*, 2 D. J. & S. 665).

Where real estate was devised to A. for life, remainder to B. absolutely should she have issue living at A.'s death, and in default over, and B. was *enceinte* at the death of A., she was held to take absolutely (*Cleghorn* v. *Burrows* (1895), 2 Ch. 497.

CHILDREN, GIFTS TO—*continued.*

Where the gift is of a certain sum to EACH of the children of A., the class to take is fixed at the death of the testator, whether possession is postponed to 21 or not; otherwise the distribution of the testator's estate would have to be postponed until it could be ascertained how many children A. would have.

Under a future gift to the children of B. on the death of a tenant for life (A.), children born in testator's lifetime, and those coming into existence before the death of A., will take; but, in default of children then existing, after-born children, in the absence of a contrary intention, will be admitted.

And where the gift is to such of the children of B. who shall attain 21, those will take who are in existence at A.'s death, or when the eldest attains 21, whichever first happens (*Clarke* v. *Clarke*, 8 Sim. 59).

Where the gift is to children "begotten" or "to be begotten," or "who may be born," only children born after the date of the will, and before the testator's death, will be admitted, and not those born after his decease (*Storrs* v. *Benbow*, 2 M. & K. 46).

Similarly, in the case of a gift to children "now born," or to "those who may be born hereafter, who shall attain 21" (*Iredale* v. *Iredale*, 25 Beav. 485).

In the case, however, of an immediate devise (or bequest of personalty) to children "to be born hereafter," all children who ever come into existence will take (*Mogg* v. *Mogg*, 1 Mer. 654); but this will not apply in the case of the gift of a certain sum to each of the children begotten or to be begotten, for otherwise the distribution of the estate would be indefinitely postponed (*Butler* v. *Lowe*, 10 Sim. 317).

Where the interest bequeathed is reversionary, the class will not be ascertained till the interest falls into possession (*Walker* v. *Shore*, 15 Ves. 122; *Harvey* v. *Stacey*, 1 Dr. 122).

Devise or bequest to A. and his children, see "Wild's Case, Rule in."

As to provisions for younger children, see "Portions," "Younger Children."

CHOSES IN ACTION.

A chose in action is that to which a man has only a bare right, enforceable by action or suit, without any occupation or enjoyment.

Where a married woman's title to choses in action has accrued before Jan. 1, 1883, they will not belong to her husband unless he reduces them into possession during the marriage; if not so reduced into possession, the right of the widow by survivorship continues unaltered, just as if she had never married. The wife's right was not divested by the marriage; the chose in action continued to belong to her until her husband reduced it into his possession (*Purdew* v. *Jackson*, 1 Russ. 1; Macq. H. & W., ed. 2, pp. 23–7; *Prole* v. *Soady*, L. R. 3 Ch. 220).

Choses in action of the wife are defined in Williams' Executors, to be "debts owing to her on bond, or otherwise, arrears of rent, legacies, trust funds, residuary personal estate, money in the funds, and other property recoverable by action or suit."

Choses in action of a married woman under the Married Women's Property Act, 1882, are her separate property. On her death intestate, however, the husband

CHOSES IN ACTION—*continued.*

will still be entitled thereto as her administrator (*Askew* v. *Rooth*, L. R. 17 Eq. 426).

Choses in action may, generally speaking, be the subject of a *donatio mortis causâ*. For example, a bond, a mortgage deed, a promissory note payable to order though not indorsed, and other similar instruments may be transferred by *donatio mortis causâ*. Not so, however, the donor's cheque.

Choses in action do not pass by a bequest of "all my goods," "all my chattels," or "all my things in a particular place or house" (*Moore* v. *Moore*, 1 Bro. C. C. 127).

CHURCH, GIFTS TO. See "Parish and Parish Church."

Next presentation to, see "Next Presentation."

CHURCH PATRONAGE.

Estate Duty shall not be payable in respect of any advowson or church patronage which would have been free from Succession Duty under s. 24 of the Succession Duty Act, 1853 (Finance Act, 1894, s. 15 (4)).

"Church patronage will include a next presentation, in respect of which, if settled by will, no Succession Duty would in any case be payable, in consequence of Legacy Duty being payable, or if settled by deed, no Succession Duty would be payable until sold." Hanson on Death Duties, 4th ed., 223.

CIVIL PAY AND PENSION.

Arrears of, when they do not exceed £100, may be paid without production of probate, etc. See "Exemptions."

Estate Duty shall not be payable in respect of any pension or annuity payable by the Government of British India to the widow or child of any deceased officer of such Government, notwithstanding that the deceased contributed during his lifetime to any fund out of which such pension or annuity is paid (Finance Act, 1894, s. 15 (3). See "India."

CLASS, BEQUEST TO A. See "Children."

CO-EXECUTORS.

Where A., B., C. are co-executors, A. may dispose of the assets so as to bind B. and C.; but he cannot make a valid transfer of railway shares or stock registered in the names of all (*Barton* v. *North Staffordshire Railway Co.*, 38 C. D. 464).

An executor is not, under ordinary circumstances, responsible for assets coming into the hands of his co-executors (*Williams* v. *Nixon*, 2 B. 472, and s. 31 of 22 & 23 Vict. c. 35 (Lord St. Leonard's Act), now repealed and re-enacted by s. 24 of Trustee Act, 1893, enacted that:—

> "A trustee shall (without prejudice to the provisions of the instrument, if any, creating the trust) be chargeable only for money and securities actually received by him, notwithstanding his signing any receipt for the sake of conformity, and shall be accountable only for his own acts, receipts, neglects, or defaults, and not for those of any other trustee, nor for any banker, broker, or other person with whom any trust moneys or securities may be deposited."

The power of an executor is not determined by the death of his co-executors, but survives him (*Flanders* v. *Clarke*, 3 Atk. 509).

COLLATERALS.

Rates of duty at which chargeable—

1. *Legacy Duty.*

Brothers and sisters of the deceased and their descendants (*a*) ..	3 per cent.
Brothers and sisters of the father or mother of the deceased and their descendants	5 per cent.
Brothers and sisters of a grandfather or grandmother of the deceased and their descendants	6 per cent.
Persons of a more remote consanguinity, or strangers in blood	10 per cent.

2. *Succession Duty.*

Brothers and sisters of the precedessor and their descendants	3 per cent.; 4½ per cent. (*b*)
Brothers and sisters of the father or mother, etc.	5 per cent.; 6½ per cent.
Brothers and sisters of a grandfather or grandmother, etc.	6 per cent.; 7½ per cent.
Persons of a more remote consanguinity, or strangers, etc.	10 per cent.; 11½ per cent.

(*a*) The terms "nephew," "niece," "uncle," "aunt," "cousin," "son-in-law," "daughter-in-law," etc., should not be used; but "descendant of a brother," "descendant of a sister," "brother of father (or mother)," "sister of father (or mother)," "descendant of a brother (sister) of father (mother)," "husband of daughter," "wife of son," etc., as the case may be.

(*b*) The higher rates are imposed in respect of successions opening on a death on or after July 1, 1888 (see "Additional Succession Duty").

3. *Estate Duty.*

S. 4 (proviso) of Finance Act, 1894, provides that an estate passing on the death of a person dying on or after Aug. 2, 1894, "under a disposition not made by the deceased to some person **other than the wife or husband or lineal ancestor or lineal descendant** of the deceased, shall not be aggregated with any other property but shall be an estate by itself, and the Estate Duty shall be levied at the proper graduated rate on the principal value thereof."

COLLECTION OF ESTATE DUTY (Finance Act, 1894).

"The Estate Duty may be collected by means of stamps or such other means as the Commissioners prescribe" (s. 8 (16)).

The Estate Duty is collected—

(*a*) by means of adhesive stamps (*q.v.*) or impressed stamps in the case of small estates the gross value of which does not exceed £300 or £500, and which by s. 16 are charged with the fixed duties of 30*s.* and 50*s.* respectively.

(*b*) In all other cases the duty is paid in cash, and a receipt in writing is given for it on the affidavit or account.

The rate is indicated by a stamp on the affidavit or account.

S. 8 (1) of the Finance Act, 1894, enacts, *inter alia*, that—

The existing law and practice relating to any of the duties now leviable on or with reference to death shall, subject to the provisions of this Act and so far as the same are applicable, apply for the purposes of the collection, recovery and repayment of Estate Duty.

COLONIAL BONDS

Do not pass under a bequest of foreign bonds (*Hull* v. *Hull*, 4 C. D. 97).

COLONIAL PROBATES ACT, 1892. See "Resealing."

COLONIES AND COLONIAL DEATH DUTIES. See "British Possessions" and appropriate headings "New South Wales," etc.

COMMENCEMENT OF ACT. See "Dates."

COMMISSIONERS OF INLAND REVENUE.

By the 12 & 13 Vict. c. 1, s. 1, the "Commissioners of Stamps and Taxes" were consolidated with the Commissioners of Excise under the name of "the Commissioners of Inland Revenue."

1. Their general powers—
   may call for books and documents (16 & 17 Vict. c. 51, ss. 45, 49; 44 Vict. c. 12, s. 37; s. 8 (14) of Finance Act, 1894);
   may cancel useless probates (39 & 40 Geo. 3, c. 72, s. 16);
   may commute future Succession Duty (s. 41 of 16 & 17 Vict. c. 51; and Estate Duty, Finance Act, 1894, s. 12);
   may compel accounting parties to verify accounts (s. 49 of 16 & 17 Vict. c. 51); (ss. 8 (5), 8 (14), of Finance Act, 1894);
   may compound for Legacy and Succession Duty (36 Geo. 3, c. 52, s. 33; ss. 23, 39 and 41 of 16 & 17 Vict. c. 51; s. 11 of 43 Vict. c. 14); and Death Duties generally as defined by s. 13 (3) of Finance Act, 1894, s. 13 (1);
   may give credit for Probate and Administration Duty (ss. 45, 46 of 55 Geo. 3, c. 184);
   may proceed by summons in the exchequer to compel payment of Legacy and Succession Duty (28 & 29 Vict. c. 104, ss. 53–64);
   may receive Succession Duty in advance (s. 40 of 16 & 17 Vict. c. 51);
   may rectify mistakes in payment (s. 30 of 36 Geo. 3, c. 52), and return excess of duty (s. 34 of 36 Geo. 3, c. 52, and s. 37 of 16 & 17 Vict. c. 51);
   may enlarge time for payment in special cases (s. 39 of 16 & 17 Vict. c. 51; s. 8 (9) of Finance Act, 1894);
2. The duties to be under their management (s. 3 of 36 Geo. 3, c. 52; s. 6 of 45 Geo. 3, c. 28; s. 3 of Probate Duty Act (55 Geo. 3, c. 184); s. 9 of 16 & 17 Vict. c. 51; s. 9 (1) of 52 Vict. c. 7); and they may provide printed forms (s. 5 of 36 Geo. 3, c. 52; s. 9 (1) of 52 Vict. c. 7; ss. 8 (14), 22 [1 *a*] of Finance Act, 1894);
   may ascertain the value of property for Estate Duty in such manner as they think fit, and may authorize an inspection of any property (s. 7 (8));
   may, after the lapse of 20 years from the death, remit the payment of Estate Duty altogether (s. 8 (11));
   and give certificates of payments of Legacy and Succession and Estate Duties, see "Certificate."
3. The powers of the Commissioners with regard to Inland Revenue are now mainly governed by the Inland Revenue Regulation Act, 1890 (53 & 54 Vict. c. 21) as amended by the Public Accounts and Charges Act, 1891 (54 & 55 Vict. c. 24).
   The expression "the Commissioners" in the Finance Act, 1894, means the Commissioners of Inland Revenue; and the expression "prescribed" means prescribed by the Commissioners (s. 22 (1) (*m*, *o*)).

COMMITTEE OF LUNATIC.

Liability of, for payment of Succession Duty (s. 44 of 16 & 17 Vict. c. 51); Estate Duty (s. 8 (4) of Finance Act, 1894).

COMMORIENTIES. See "Death."

COMMUTATION.

1. *Succession Duty*, 16 & 17 Vict. c. 51 (Form 19).

S. 39 empowers the Commissioners, where the value of any succession shall not be fairly ascertainable according to the directions laid down in the Act, to compound the duty payable upon such terms as they shall think fit.

S. 41 empowers the Commissioners to commute future duties on successions. It is not, however, the practice to commute under this section unless the property is being dealt with in such a manner as to render it expedient to free it from the charge of duty.

Application to commute should be made by the trustees, where the property is vested in them, and when a reversion only is being sold.

Application to commute should be made by letter to the Controller of Legacy and Succession Duties, and the following particulars should be given—

(*a*) The dealings with the property; (*b*) the circumstances (sale or mortgage) regarded as sufficient to warrant a commutation; (*c*) the full description of the property, its gross annual value, annual outgoings, sum for which it is contracted to be sold or mortgaged; (*d*) the dates of birth of tenant-for-life, or annuitant; (*e*) the title to the property, if derived under a will, the full name of testator and date of probate should be stated, and, if under a deed, the original or a copy should be forwarded for perusal.

Where an application was made for a payment out of Court of a sum of money upon which Succession Duty would, at a future time, have to be paid, the parties were recommended to commute under s. 41 (*Bailey* v. *Tindall*, 18 Jur. 668).

Where in the case of settled realty the settlement contains the ordinary power of sale, the proceeds to be reinvested in the purchase of other real estate, and such power is exercised, the claim for duty on an expectant succession (and also for Estate Duty) will be shifted from the property sold to the proceeds of sale or the property acquired therewith (*Dugdale* v. *Meadows*, L. R. 9 Eq. 212, 6 Ch. App. 501). See also *Re Warner's Estate*, 45 L. T. (N. S.) 36. In this latter case the real estate comprised in the settlement did not contain a power of sale, but was sold under the Settled Estates Act, 1877.

2. *Estate Duty* (Form 20).

S. 12 of the Finance Act, 1894, enacts that—

The Commissioners in their discretion, upon application by a person entitled to an interest in expectancy, may commute the Estate Duty which would or might, but for the commutation, become payable in respect of such interest for a certain sum to be presently paid, and for determining that sum shall cause a present value to be set upon such duty, regard being had to the contingencies affecting the liability to and rate and amount of such duty, and interest being reckoned at 3 per cent.; and on the receipt of such sum they shall give a certificate of discharge accordingly.

The rate of duty for the purposes of Commutation is regulated by the amount of the property comprised in the particular instrument. So that if only part

COMMUTATION—*continued.*

of a fund, or part of an estate, is being dealt with, the rate for duty will be that applicable to the whole fund or estate.

Examples (Carlisle Tables).

1. Devise by A. (*ob.* 1874) to B. for life, remainder to C. in fee.

Case 1.

Value of whole estate for rate .. £2000 0 0
Value of property now being dealt with £993 10 1
C., a lineal.

	£	s.	d.
Estate Duty (3 per cent.)	29	16	1
Deduct value of annuity of 17*s.* 10*d.* (3 per cent. on £29 16*s.* 1*d.*) for life of 57, B.'s present age	10	7	7
Estate Duty to pay	£19	8	6

Case 2.

As in Case 1, but value of property dealt with, £760 0 0
C., a brother of A.; B.'s age 74.

Estate Duty.

Estate Duty (3 per cent.)				22	16 0
Deduct value of annuity of 13*s.* 8*d.* for life of 74				3	18 6
Estate Duty to pay				£18	17 6
Succession Duty.					
Principal value	£760	0	0		
Less Estate Duty	22	16	0		
	£737	4	0		
Succession Duty (3 per cent.)				22	2 4
Deduct value of annuity of 13*s.* 3*d.* for life of 74				3	16 3
Succession Duty to pay				£18	6 1

2. Devise by A. (*ob.* 1874) of real estate upon trust to sell, and proceeds to B. (now 73) for life, remainder to C. absolutely. Duty at 1 per cent. was paid on the corpus, B. and C. being lineals, and liable to the same rate of duty (16 & 17 Vict. c. 51, s. 32; 36 Geo. 3, c. 52, s. 12).

Value for rate, and of property dealt with, £802 (£800).

	£	s.	d.
Estate Duty (2 per cent.)	16	0	0
Allowance (Finance Act, 1896, s. 21)	8	0	4
	7	19	8
Deduct value of annuity of 4*s.* 9*d.* for life of 73	1	9	0
Estate Duty to pay	£6	10	8

COMPANY.

1. *Probate (and Legacy) Duty*—

Shares in railway companies incorporated within the jurisdiction of the Court are liable to Probate Duty (*Attorney-General* v. *Higgins*, 2 Hurlst. & Norm. 339). Also shares in a company incorporated by royal charter with a head-office in England, although its business is chiefly carried on abroad (*e.g.* in India), *Fernandes' Case* (L. R. 5 Ch. App. 314).

Shares in public companies are generally personal estate (for example, shares in a company under the Companies Act, 1862, s. 22 of 25 & 26 Vict. c. 89), but certain shares are, or have been held to be, realty; for example—

COMPANY—*continued.*

Shares (king's shares) in the New River Company;
Shares in the Aire and Calder Canal;
Shares in the York Cemetery Company, etc., see "Real Property."

2. *Succession Duty.*

Where the successor to real property is a company duty is payable upon the principal value, but by the usual instalments, s. 27 of 16 & 17 Vict. c. 51.

COMPETENT TO DISPOSE.

Estate Duty.

Property passing on the death of a person dying on or after Aug. 2, 1894, of which he was "competent to dispose" is liable to Estate Duty (Finance Act, 1894, s. 2 (1 *a*)).

Definition.

A person shall be deemed competent to dispose of property if he has such an estate or interest therein, or such general power as would, if he were *sui juris*, enable him to dispose of the property, including a tenant-in-tail, whether in possession or not; and the expression "general power" includes every power or authority enabling the donee or other holder thereof to appoint or dispose of property as he thinks fit, whether exerciseable by instrument *inter vivos*, or by Will, or both, but exclusive of any power exerciseable in a fiduciary capacity under a disposition not made by himself, or exerciseable as tenant-for-life under the Settled Land Act, 1882, or as mortgagee (s. 22 (2 *a*), Finance Act, 1894).

Money which a person has a general power to charge on property shall be deemed to be property of which he has power to dispose (s. 22 (2 c)).

S. 5 (2) enacts that if Estate Duty has already been paid in respect of any settled property since the date of the settlement, the Estate Duty shall not, nor shall any of the duties mentioned in the fifth paragraph of the First Schedule to this Act, be payable in respect thereof, until the death of a person who was at the time of his death or had been at any time during the continuance of the settlement competent to dispose of such property.

S. 13 of the Finance Act, 1893, enacts that s. 5, s.-sec. 2, of the Finance Act, 1894, shall be read and have effect as if the following words had been inserted at the end thereof, "and who if on his death subsequent limitations under the settlement take effect in respect of such property was *sui juris* at the time of his death or had been *sui juris* at any time while so competent to dispose of the property."

Succession Duty.

1. Where real property passes on such a death to a successor who is "competent to dispose" of the property, the value of the succession for the purpose of Succession Duty shall be the principal value of the property, after deducting the Estate Duty payable in respect thereof on the said death and the expenses, if any, properly incurred of raising and paying the same (Finance Act, 1894, s. 18 (1)).

Examples.

i. A. (dies after Aug. 1, 1894) devises real estate to B. (brother) for life, with a general power of appointment; remainders over, in default of appointment, to C. (brother) in fee simple. B. being "competent to

COMPETENT TO DISPOSE—*continued.*

dispose" pays Succession Duty on the principal value, whether he does or does not exercise the power.

Where the power is exercised by deed or will, any further Succession Duty under the will or deed will depend upon the limitations. S. 5 (2) does not apply.

ii. A. (dies after Aug. 1, 1894) devises real estate to B. and C. (brother and uncle of A.) as joint tenants in fee.

B. and C. pay on the principal value and on the death of either without severance, the survivor pays Succession Duty on the principal value of one moiety. See "Joint Tenancy."

2. S. 21 of the Succession Duty Act, 1853, enacted, *inter alia*, that as regards successions to "real property" instalments not due at successor's death cease to be payable unless the successor was competent to dispose by will of a continuing interest in such property, in which case the unpaid instalments were to be a continuing charge on such interest in exoneration of his other property, and to be payable by the owner for the time being of such interest.

"Competent to dispose by will of a continuing interest" (s. 21), refers to the quantity of interest and not to the personal capacity of the successor to make a will. Therefore where a lunatic or *feme sole*, being "competent to dispose," etc., dies intestate before all or any of the instalments of duty are payable, the person succeeding to such disposable interest will be held liable for the payment of such instalments (*Attorney-General* v. *Hallett*, 2 *Hurlst. and N.* 368).

A tenant-in-fee simple; a tenant-in-tail who has disentailed (*Lord Lilford* v. *Attorney-General*, L. R. 2 H. L. 63); a joint tenant who has severed; a tenant-for-life with a general power of appointment by will (though he omits to exercise the power), are all "competent to dispose by will of a continuing interest." The competency to dispose must be acquired as part of the succession, and not *aliunde* (*Lord Lilford* v. *Attorney-General*, *supra*).

COMPOSITE (or COMPOUND) SETTLEMENT. See "Settlement."

COMPOSITION OF DEATH DUTIES.

Legacy Duty.

If it shall appear to the Commissioners for Stamps at the end of two years after the death of any person, that it will require time to collect the effects or be difficult to ascertain the residue of the personal estate, the duty may be compounded for (36 Geo. 3, c. 52, s. 33).

Where any legacy duty or succession duty shall be presumptively payable in respect of any interest in expectancy upon the determination of a life or other temporary interest in possession in a legacy, or residue, or in personal property comprised in a succession, and the duty (if any) payable upon the life or other temporary interest shall have been fully paid and satisfied, it shall be lawful for the Commissioners of Inland Revenue, in their discretion, upon the application of the executor or trustee or other person who would be accountable for the duty in respect of such interest in expectancy if it were then in possession, to commute the duty presumptively payable for a certain sum to be presently paid.

For assessing the amount which shall be so payable the Commissioners shall cause a present value to be set upon the presumptive duty, regard being had to any contingencies affecting the liability to such duty, and the interest of money involved in the calculation being reckoned at the rate

COMPOSITION OF DEATH DUTIES—*continued.*

for the time being allowed by the Commissioners in respect of duties paid in advance under the Succession Duty Act, 1853 (43 Vict. c. 14, s. 11).

It shall be lawful for the Commissioners of Inland Revenue, upon the application of the person acting in the execution of the Will of any deceased person, and upon the delivery to them of an account showing the amount of the estate and effects in respect whereof Legacy duty is payable, together with the names or description of class of the persons entitled thereto and every part thereof, in possession or expectancy, and their degrees of consanguinity to the testator, to assess the duty upon the amount shown by the said account at such a sum by way of composition as, having regard to the circumstances, shall appear to be proper, and to accept payment of the duty so assessed in full discharge of all claims for Legacy duty under such Will.

If the Commissioners are of opinion that an application should receive the assent of any person, they shall refuse to entertain the application until such assent shall have been given (44 Vict. c. 12, s. 43).

Succession Duty.

Where, in the opinion of the Commissioners, any succession shall be of such a nature, or so disposed or circumstanced, that the value thereof shall not be fairly ascertainable under any of the preceding directions, or where, from the complication of circumstances affecting the value of a succession, or affecting the assessment or recovery of the duty thereon, the Commissioners shall think it expedient to exercise this present authority, it shall be lawful for them to compound the duty payable on the succession upon such terms as they shall think fit, and to give discharges to the successor, upon payment of duty according to such composition; and it shall be lawful for them, in any special cases in which they may think it expedient so to do, to enlarge the time for payment of any duty (16 & 17 Vict. c. 51, s. 39).

It shall be lawful for the Commissioners, in their discretion, upon application made by any person who shall be entitled to a succession in expectancy, to commute the duty presumptively payable in respect of such succession for a certain sum to be presently paid, and for assessing the amount which shall be so payable, they shall cause a present value to be set upon such presumptive duty, regard being had to the contingencies affecting the liability to such duty, and the interest of money involved in such calculation being reckoned at the rate for the time being allowed by the Commissioners in respect of duties paid in advance; and upon the receipt of such certain sum they shall give discharges to the successor accordingly (s. 41). And see 43 Vict. c. 14, s. 11 (*supra*).

Death Duties generally.

S 13 of Finance Act, 1894.

1. Where, by reason of the number of deaths on which property has passed, or of the complicated nature of the interests of different persons in property which has passed on death, or from any other cause, it is difficult to ascertain exactly the amount of death duties or any of them payable in respect of any property or any interest therein, or so to ascertain the same without undue expense in proportion to the value of the property or interest, the Commissioners on the application of any person accountable for any duty thereon, and upon his giving to them all the information in

COMPOSITION OF DEATH DUTIES—*continued.*

his power respecting the amount of the property and the several interests therein, and other circumstances of the case, may by way of composition for all or any of the death duties payable in respect of the property or interest, and the various interests therein, or any of them, assess such sum on the value of the property or interest, as having regard to the circumstances appears proper, and may accept payment of the sum so assessed, in full discharge of all claims for death duties in respect of such property or interest, and shall give a certificate of discharge accordingly ;

2. Provided that the certificate shall not discharge any person from any duty in case of fraud or failure to disclose material facts.

3. In this section the expression "death duties" means the Estate Duty under this Act, the duties mentioned in the First Schedule to this Act, and the Legacy and Succession Duties, and the duty payable on any representation or inventory under any Act in force before the Customs and Inland Revenue Act, 1881.

COMPROMISE.

S. 23 of 36 Geo. 3, c. 52, enacted—

That where any legacy or part of any legacy, or residue or part of residue, whereon any duty shall be chargeable by this Act, shall be satisfied otherwise than by payment of money or application of specific effects for that purpose, or shall be released for consideration, or compounded for less than the amount or value thereof, then, and in such case, the duty shall be charged and paid in respect of such legacy or part of legacy, or residue or part of residue, according to the amount or value of the property taken in satisfaction thereof, or as the consideration for release thereof, or composition for the same : Provided always, that if any legacy or bequest shall be made in satisfaction of any other legacy or bequest, or title to any residue or part or residue, of any personal estate remaining unpaid, the duty shall not be paid on both subjects, although both may be chargeable with duty, but shall be paid on the subject yielding the largest duty.

A. made various bequests (totalling £90,000) to B., C., and others.

The payment of these legacies was resisted by X., but ultimately a compromise was arrived at by which it was agreed that B., C., and others should be paid at Edinburgh £55,000 in full and ample discharges of their claims. At the settlement X. retained £5000 to pay the legacy duty. An action was brought to recover this sum from him, but was decided in his favour on the ground that the "ample discharges" to be granted by the legatees on receiving payment at Edinburgh must be duly stamped to have legal effect, that is, the legacy duty must be deducted (*Fischer* v. *Earl of Seafield*, 4 Sco. Sess. 1st Ser., 2nd ed., 194).

However, the administrator and not the beneficiary had to pay the duty where the compromise arrived at was a certain figure to be paid "as the price to be paid as a release of all claims" (*Greville* v. *Greville*, 27 B. 396).

Where in an administration suit the executors procure the validity of the will to be admitted by paying a portion of the testator's property to his next-of-kin, no deduction can be taken in the residuary account of any money so paid, but duty must be paid on the whole residue (see *Reg.* v. *Commissioners of Stamps and Taxes, Stracey's Case*, 6 Q. B. 657 ; *Lord Advocate* v. *Gordon*, 22 Sco. Sess. Ca. 4th Ser., 629).

Money left to strangers in blood was claimed by the next-of-kin as being an

COMPROMISE—*continued.*

invalid bequest, and an arrangement was entered into to which the Court interponed authority by which each set of claimants took one-half.

It was held by the First Division of the Court of Session, sitting as the Court of Exchequer in Scotland, that under the 23rd section (*supra*), the strangers in blood having released the legacy for consideration and compounded for one-half, 10 per cent. legacy duty fell to be paid only on that half, and not upon the whole sum as bequeathed (*Macrae* v. *Lord Advocate*, 31 Sco. L. R. 637).

COMPULSORY SALE.

A. devises real estate to B., which, however, is afterwards sold under the compulsory powers of a railway company, but the purchase is not completed until after A.'s death.

The purchase-money passes to A.'s personal representatives, and not to the devisee (B). *Re Manchester and Southport Railway Co.*, 19 B. 365; see *Cramer's Case*, 1 Smale and G. 32; *Re Harroop's Case*, 3 Drew 726, for examples where money paid into Court under local acts was treated as realty.

CONDITIONAL LEGACY.

1. A conditional legacy is one where the gift is to vest upon the happening or performance of a condition (a condition precedent), or where the gift having vested in the first instance is liable to be divested by the non-performance or breach of the condition (a condition subsequent). In the former case the Court will favour the donee, and will carry the gift into effect, provided the condition has been substantially complied with (*Robinson* v. *Wheelright*, 21 B. 214). "Where a literal compliance with the condition becomes impossible from unavoidable circumstances, and without any fault of the party, it is sufficient that it is complied with as nearly as it practically can be, or, as it is technically called, 'cy-près'" (Story, Eq. Jur. s. 291).

Example.

£10,000 to D. on condition of his taking the name and arms of testator. Annuity of £180 to E. on condition that he does not prove against the estate for a sum of £500 which he lent to testator (*Sweeting* v. *Sweeting*, 1 Drew 330).

Here it is held that if the legatee accepts the gift (which it is open to him to disclaim) he must take it with all its incidents, including the liability to Legacy Duty. He in fact must pay on the full amount of the legacy without any deduction. A deduction can, however, be taken against Probate (or Estate) Duty of the debt of £500.

Attorney-General *v.* **Sharp.**

The late George Copley (*ob.* March 8, 1888) by his last will *inter alia* directed his trustees to set apart moneys or securities of the value of £5000, to pay the income thereof to Mary Althorp during such period of her life as she should continue unmarried, provided that she should to the satisfaction of his trustees stand in the place of and act as a parent and guardian to his children, who, while under the age of 25 years, or being daughters and unmarried, although over the said age, should in the opinion of the trustees require a home; but this condition was not to deprive Mary Althorp of the income so long as she continued unmarried, although there might be no child in the opinion of the trustees requiring a home. There were other dispositions for the benefit of his children and for the ultimate distribution of the estate.

The trustees contended that the legacy to Mary Althorp was in trust for the

CONDITIONAL LEGACY—*continued.*

children, of whom there were several, some being under 25, and consequently not liable to duty: but the Crown claimed a duty of £10 per cent., as upon a legacy to Mary Althorp herself. The matter was argued on Dec. 16, 1890, before the Queen's Bench Division (Stephen and Charles, JJ.), who held that the bequest was a legacy to Mary Althorp, subject no doubt to condition, but none the less a legacy, and consequently Legacy Duty was payable. Their decision was appealed against, but was confirmed by the Court of Appeal, consisting of Lord Esher, M.R., L.JJ. Lopes and Kay, on May 28, 1891. The case has not been reported. See Thirty-fifth Report of the Commissioners of Inland Revenue, p. 52.

2. A. in pursuance of a limited power created by will appoints a jointure rent charge to his widow, B., in lieu and bar of dower.

This is a legacy to B., whether the condition that B. must take the gift in lieu of dower is imposed by the testator, or only by the appointor, B. (*Attorney-General* v. *Henniker*, 7 Ex. 331).

"It may, indeed, be a question whether, if there were a gift of a legacy out of personalty on a condition, the performance of which would cause something to be returned to the personal estate of the testator, whether there the duty would be payable on the whole legacy, or whether there would be a deduction in respect of the difference. Thus, suppose a testator were to say, I give £500 to A., he paying £100 to my executor, the legacy would be substantially £400, and I suppose that amount only would be liable to duty." *Per* Kindersley, V.C., in *Sweeting* v. *Sweeting*, 1 Drew 334.

In *Kirk* v. *Kirk*, 31 W. R. 94, it was decided that—

Where a testator makes it a condition of a devise that the devisee shall do something whereby a third person will be, directly or indirectly, benefited, the fact that the devisee refuses to perform the condition, or dies before the testator, will not deprive such third person of the benefit of the condition. And this is the case whether such condition is that payment shall be made to some specific individual, or that the testator's estate (and with it all parties interested therein) shall be exonerated from payment of a debt due by him to the devisee.

"I think that a direction by a testator to a devisee to exonerate his personal estate from a debt is equivalent, in substance, to a gift to the person who is entitled to the personal estate, and who would otherwise be liable to pay the debt out of it. Nor is this benefit to be limited to a residuary legatee. It extends to all persons who would get the benefit of the sum of money from which the personal estate is exonerated—to creditors, to general legatees, to residuary legatees, or any one else whoever they are" (*per* Jessel, M.R., in this case).

CONFIRMATION.

Confirmation is the ceremony in Scotland corresponding to Probate in England and Ireland.

The confirmation of a will by a codicil will not revive a legacy which has been in the mean time adeemed (*Drinkwater* v. *Falconer*, 2 Ves. Sen. 626).

CONSANGUINITY OF BENEFICIARY AND RATE OF DUTY. See "Rates of Duty."

CONSIDERATION.

I. *Succession Duty.*

S. 7 of the Succession Duty Act expressly exempts from its operation cases of *bonâ fide* sale, and s. 17 enacts that—

> "No bond or contract made by any person *bonâ fide* for valuable consideration in money or money's worth (*a*), for the payment of money or money's worth after the death of any other person, shall create the relation of predecessor and successor between the person making such bond or contract, and the person with whom the same shall be made; but any disposition or devolution of the moneys payable under such bond or contract, if otherwise such as in itself to create a succession within the provisions of this Act, shall be deemed to confer a succession."

II. *Estate Duty.*

S. 3 of the Finance Act, 1894, enacts that—

(1) Estate Duty shall not be payable in respect of property passing on the death of the deceased by reason only of a *bonâ fide* purchase from the person under whose disposition the property passes, nor in respect of the falling into possession of the reversion on any lease for lives, nor in respect of the determination of any annuity for lives, where such purchase was made, or such lease or annuity granted, **for full consideration in money or money's worth** paid to the vendor or grantor for his own use or benefit, or in the case of a lease for the use or benefit of any person for whom the grantor was a trustee.

(2) Where any such purchase was made, or lease or annuity granted, **for partial consideration in money or money's worth** paid to the vendor or grantor for his own use or benefit, or in the case of a lease for the use or benefit of any person for whom the grantor was a trustee, the value of the consideration shall be allowed as a deduction from the value of the property for the purpose of Estate Duty.

And no allowance shall be made, in determining the value of an estate for the purpose of Estate Duty, for debts incurred by the deceased, or incumbrances created by a disposition made by the deceased, unless such debts or incumbrances were incurred or created *bonâ fide* **for full consideration in money or money's worth** wholly for the deceased's own use and benefit, and take effect out of his interest; Finance Act, 1894, s. 7 (1 *a*).

III. As to settlement by purchaser for valuable consideration in lieu of taking a conveyance or assignment to himself, see "Purchaser."

See also "Marriage Consideration;" "Sale."

CONSTRUCTION.

1. *Death Duties.*

(*a*) Of the Succession Duty Act:—

> "All your lordships who gave an opinion in the *Saltoun Case* (*b*) observed that the statute, which by the same enactments imposes a tax on succession in every part of the United Kingdom, is to be construed,

(*a*) "These words appear to have been inserted for the purpose of excluding the consideration of marriage" (*per* Lord Westbury, C., in *Floyer* v. *Bankes*, 9 Jur. N. S. 1256). "When the element of marriage enters as part of the consideration the whole case is excluded from the 17th section" (*Attorney-General* v. *Rathdonnell*, 32 L. R., Ir. 574).

(*b*) 3 Macq. Ho. Lds. Cas. 659.

CONSTRUCTION—*continued.*

not according to the technicalities of the law of real property in England or in Scotland, but according to the popular use of the language employed so that all such property may be subject to the Succession Duty, according to the general intention which the legislature has expressed." *Per* Lord Campbell, C., in *Lord Braybrooke* v. *Attorney-General* (7 Jur. N. S. 742; 9 H. L. Cas. 150).

(*b*) **Generally.**

It is stated in "Maxwell on Statutes" 1st ed., p. 259 (*a*), that "Statutes which impose pecuniary burdens are subject to the rule of strict construction. It is a well settled rule of law that all charges upon the subject must be imposed by clear and unambiguous language, because in some degree they operate as penalties. The subject is not to be taxed unless the language by which the tax is imposed is perfectly clear and free from doubt. For this proposition several decisions and dicta are cited, and there is no doubt as to its being a correct statement of the law" (*per* Pollock, B., in *Clifford* v. *Commissioners of Inland Revenue* (1896) 2 Q. B. 193).

If the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand if the Crown, seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of the law the case might otherwise appear to be. In other words, if there be admissible, in any statute, what is called an equitable construction, such a construction is not admissible in a taxing statute, where you can simply adhere to the words of the statute. *Per* Lord Cairns in *Partington* v. *Attorney-General*, L. R. 4 Eq. 1., H. L. App. 100, at p. 122.

2. Of Deeds:—

Deeds are to be construed favourably so as, as far as possible, to effectuate the apparent intention of the parties. Such intention is to be collected from the deed itself, and the construction is, as a general rule, to be according to the words taken in their strict and proper sense.

Where words will bear two senses, that sense is to be preferred which is most agreeable to law.

Where the intention of the parties cannot be discovered the deed will be void for uncertainty.

Where two clauses of a deed are so totally repugnant to each other that they cannot be reconciled, the former clause will prevail, unless contrary to the apparent general intention of the parties.

Subject to all other rules of exposition deeds are construed most strongly against the grantor, covenantor, etc., and most favourably to the grantee, covenantee, or person intended to be benefited (see further, Smith's "Real and Personal Property").

3. Of Wills:—

1. General principles—

In construing a will the object of the Courts is to ascertain the expressed intentions of the testator. Subject to this, the words and expressions used are to be taken in their ordinary, proper and grammatical sense; technical words and expressions in their technical sense.

In wills (as distinguished from deeds) the general expressed intention will

CONSTRUCTION—*continued.*

override any ordinary or technical expression which conflicts with it (*Key* v. *Key*, 4 D. M. & G. 73). However, wills of realty are, in this respect, construed more strictly than wills of personalty (*Miles* v. *Harford*, 12 Ch. D. 691).

"If words of art are used, they are construed according to the technical sense, unless upon the whole will it is plain that the testator did not so intend" (Lord Alvanley in *Thellusson* v. *Woodford*, 4 Ves. 329).

"The construction of the will is to be made upon the entire instrument, and not merely upon disjointed parts of it; and consequently all its parts are to be construed with reference to each other. So the language of the will ought to be construed with reference to the codicil; and *vice versâ*.

Hence general words in one part of a will may be restrained in cases where it can be collected from any other part of the will that the testator did not mean to use them in their general sense.

Hence, also, generally speaking, if the same words occur in different parts of the same will, they must be taken to have been used everywhere in the same sense, unless there appears a clear intention to the contrary. But this rule does not preclude the Court from putting a different construction upon the same words, even although used only once in a will when applied to different subject-matter.

Thus, in *Forth* v. *Chapman* (L. P. Wms. 667), where the testator devised real and personal estate to A., and if he should die, and **leave no issue of his body**, then to B., Lord Macclesfield said, "that it might be reasonable enough to take the same words as to the different estates of realty and personalty in different senses, and as if repeated by two several clauses; and that the words 'leave no issue,' as applied to the **personal** estate, should be taken to mean, leave no issue **at the time of his death**, but as applied to the freehold to mean an **indefinite failure of issue**": And this case has been considered as an authority in many subsequent instances for a different construction of the same words in a will as applied to different subjects (Williams' Executors, 9th ed., II., 933).

The INTENTION of the testator when legitimately proved is competent not only to **fix** the sense of **ambiguous** words, but to **control** the sense even of **clear** words and to **supply** the place of **express** words in cases of difficulty or ambiguity.

In general extrinsic evidence is not admissible; but it will be admitted (*a*) to explain latent ambiguities (*Charter* v. *Charter*, L. R. 7 H. L. 364; *Reynolds* v. *Whelan*, 16 L. J. Ch. 434); (*b*) to rebut presumptions of law or equity, as the presumption in favour of satisfaction, of resulting trusts, and of ademption of legacies by portions, etc.; to explain the meaning of signs, symbols, and nicknames, and to show that the will was executed on a date other than that appearing on the face thereof.

When the words of the will may be fairly construed in two different ways, and one of the constructions would defeat, while the other would effectuate the testator's intention, that will be adopted which will tend to carry out the intention.

If two parts of a will are totally inconsistent and irreconcilable, the latter will prevail on the principle that the testator may have changed his mind; but the well-known doctrine that where there is a general intent and also a particular one, the particular, although last expressed, is to be sacrificed to the general, is of course an exception to this rule.

CONSTRUCTION—*continued.*

Where the intention of the testator cannot be discovered the will will be void for uncertainty.

Where the testator died domiciled abroad, the law of the domicile must prevail apart from any contrary intention expressed by the testator. As to what will amount to evidence of such intention, see *Bradford* v. *Young*, 26 C. D. 656; 29 C. D. 617.

CONSTRUCTIVE TRUSTS

Are trusts raised by construction of equity with a view to satisfy the demands of justice, irrespective of the presumed intention of the parties, either express or implied.

Examples.

1. Vendor's lien for unpaid purchase-money.
2. Renewal of lease by trustee in his own name, who will be held to be a constructive trustee for the benefit of the *cestui que* trust. A tenant for life, or partner (or other person standing in a fiduciary relation in respect of the property effected), will, on renewing a lease, be subject to the same rule.
3. Where a part owner, acting *bonâ fide*, lays out money on necessary and permanently beneficial improvement, a constructive trust may arise in his favour in respect of his outlay.

Trustees have a lien on trust funds for expenditure properly incurred.

A (not a volunteer) who pays premiums on a policy of insurance to prevent lapse has a lien on the policy or its proceeds. See further, "Snell's Equity," 11th Edition.

CONTINGENCY, GIFTS SUBJECT TO A.

A legacy subject to a contingency is to be charged with duty as an absolute bequest, subject to the duty being readjusted on the happening of the contingency.

S. 17 of 36 Geo. 3, c. 52, enacts, that—

When any legacy, or any residue or part of residue, shall be given, subject to any contingency which may defeat such gift, and whereupon the same may go to some other person or persons, such bequest (unless chargeable as an annuity under the provisions herein contained) shall be charged with duty as an absolute bequest, to the person or persons who shall take the same subject to such contingency, and such duty shall be paid out of the capital of such legacy, or residue or part of residue, notwithstanding the same may, upon such contingency, go to some person not chargeable with the same duty, or with any duty; and if such contingency shall afterwards happen, and the property so bequeathed shall thereupon go in such manner that the same, if taken immediately after the death of the testator or testatrix, under the same title, would have been chargeable with a higher rate of duty than the duty so paid, the person or persons becoming entitled thereto shall be charged with and shall pay the difference between the duty so paid and such higher rate of duty.

See also s. 34, which provides that if any legacy be refunded the duty is to be repaid. This section meets the case (not provided for by s. 17) where, on the happening of a contingency, the property bequeathed goes to some person chargeable with a lower rate of duty, or not chargeable with duty at all.

As to gifts by way of annuity the same principle applies (s. 8); so also as to successions (ss. 32 and 36 of 16 & 17 Vict. c. 51).

CONTINGENCY, GIFTS SUBJECT TO A—*continued.*

S. 8 enacts that—

The value of any legacy given by way of annuity, whether payable annually or otherwise, for any life or lives, or for years determinable on any life or lives, or for years or other period of time, shall be calculated, and the duty chargeable thereon shall be charged, according to the tables in the schedule hereunto annexed; and the duty chargeable on such annuity shall be paid by four equal payments, the first of which payments of duty shall be made before or on completing the payment of the first year's annuity, and the three others of such payments of duty shall be made in like manner successively, before or on completing the respective payments of the three succeeding years' annuity respectively; and the value of any such annuity, **if determinable upon any contingency** besides the death of any person or persons, shall be calculated **without regard to such contingency**; . . . and in case any such annuity shall at any time determine upon any other contingency than the death of any person or persons, then and in such case, not only all payments of duty which would otherwise become due after the happening of such contingency, if any such would become due, shall cease, but it shall be lawful for the person or persons who shall have paid any duties which shall have previously become due, to apply for and obtain a return of so much of the duty so paid as will reduce the same to the like duty as would have been payable by such person or persons for such annuity, calculated according to the term for which the same shall have endured; which abatement the said Commissioners for management of the stamp duties shall settle and determine according to the tables in the schedule hereunto annexed, and shall cause the amount of such abatement to be paid to the person or persons entitled to the same, out of any moneys in their hands arising from the duties imposed by this Act.

Example.

£2000 to INVEST and pay the income to A. for life, and upon his death to B. for life, and upon his death the principal to C.; but, should C. die under twenty-one and without issue, to D.

Where A., B., and C. are all liable to the SAME RATE of duty, but D. to a DIFFERENT RATE, duty is still payable on the *corpus* by force of ss. 12 and 17 (*supra*).

In the event of D. becoming entitled, then if D. is liable to a higher rate of duty, he has to pay the difference: if to a lower rate there is no provision in s. 17 for a return of the difference.

CONTINGENT INCUMBRANCE.

No allowance in estimating the value of a succession, is to be made in respect of any contingent incumbrance; but on such incumbrance taking effect as a burden on the interest of the successor (as, for example, where portions for younger children, charged on realty, are directed to be raised and paid only in the event of the children attaining 21) he is entitled to the return of a proportionate part of the duty (s. 35 of 16 & 17 Vict. c. 51).

CONTINGENT INTEREST IN EXPECTANCY.

Liable to Probate Duty (and Estate Duty) (*Lord* v. *Colvin*, L. R. 3 Eq. 737).—A fair and reasonable value should be put upon it. A mere "nominal" value is insufficient (*Talbot* v. *Staniforth*, 1 Jo. & Hem. 484).

CONTINGENT SETTLEMENT.

A contingent settlement of property is a settlement thereof within the meaning of s. 5 (1) of the Finance Act, 1894; and an absolute settlement of part of the property together with the contingent settlement of the residue, is a settlement of the whole, and renders the whole liable to Settlement Estate Duty under the said section (*Attorney-General* v. *Fairley*, 76 L. T. 526).

Where in the case of a death occurring after the commencement of this Act **settlement estate duty** is paid in respect of any property **contingently settled**, and it is thereafter shown that the contingency has not arisen, and cannot arise, the said duty paid in respect of such property shall be repaid (Finance Act, 1898, s. 14).

CONTINGENT WILL.

Where A. makes his will conditional upon his dying within a particular period, the will does not take effect should he survive the period (*In bonis Porter*, 2 P. & D. 22).

CONTINUING INTEREST, COMPETENT TO DISPOSE BY WILL OF.

See "Competent to Dispose."

CONTRIBUTION.

1. **Estate Duty.** See "Apportionment of duty."

2. **As between co-trustees on a breach of trust.**

Where one trustee alone is morally guilty of the breach, and the other is only technically liable, the Court occasionally provides in its judgment that the innocent trustee shall be entitled to be recouped out of the estate of the guilty trustee, the amount he has been compelled to pay in satisfaction of the breach. Where no such provision is made, the trustee, having made good the whole breach, must (as generally happens where both trustees are equally guilty, and there is a judgment against both) commence an independent action against his co-trustee, to enforce such contribution.

Recoupment or contribution, as regards the costs of the suit, unless provided for in the judgment, cannot apparently be obtained by independent action in favour of the trustee who has paid the whole of such costs (*Dearsley* v. *Middleweek*, 18 Ch. Div. 236).

3. **As between co-sureties.**

Where A. and B. are co-sureties, and A. has paid the whole, or part of the debt, he has a right to contribution from his co-surety (B.), which right may exist before payment where there has been judgment against A. (*Wolmershausen* v. *Gallick*, 1893; 2 Ch. 514).

Where a person, dying after Aug. 1, 1894, has become **guarantor or surety** for another person, no **allowance against Estate Duty**, in respect of the amount guaranteed is to be made under the Finance Act, 1894, any more than such an allowance would have been made against Probate Duty under the Acts previously in force, unless and until the amount guaranteed by the deceased ripens from a mere liability into a debt, and is actually recoverable from his estate.

Debts payable by the representatives of a deceased person as a guarantor or surety are now dealt with as coming within s. 7 (1) (*a*) of Finance Act, 1894.

CONTRIBUTION—*continued.*

4. **As between co-directors.**

The like right to contribution exists in favour of one director of a company against his co-director in respect of advances made to the company upon the express suretyship of the directors, and also where (as from the loan being unauthorized or otherwise) the company is not liable at all, but the directors making the loan are personally liable.

CONVERSION.

The Doctrine.

Time from which conversion takes place:—

(*a*) In a will;

(*b*) In a deed;

(*c*) Under an order of the Court.

LAND into MONEY: effect of a direction to convert:—

(*a*) Generally;

(*b*) For FISCAL purposes (Probate Duty, Legacy Duty, Succession Duty, Account Duty, Estate Duty).

MONEY into LAND: effect of a direction to convert:—

(*a*) Generally;

(*b*) For FISCAL purposes.

Effect of failure of the objects for which conversion was directed:

(*a*) Total failure;

(*b*) Partial failure.

Partnership realty.

Conversion of wasting securities.

i. **The Doctrine.**

Property directed to be converted is considered as that species of property into which it is to be converted, and this, in whatever manner the direction is given, whether by will, or by contract, or in marriage articles, or by marriage settlement, or otherwise (*Fletcher* v. *Ashburner*, 1 L. C. 898).

ii. **Time from which the conversion takes place:—**

(*a*) In a WILL as from the DEATH of the testator (*Beauclerk* v. *Mead*, 2 Atk. 167).

(*b*) In a DEED, from the EXECUTION of the deed, and this notwithstanding the deed may contain a trust for sale which is not to arise until after the settlor's death (*Clarke* v. *Franklin*, 4 K. & J. 257); and this whether the conversion is of land into money, or of money into land (*Wheldale* v. *Partridge*, 8 Ves. 236). This rule, however, does not apply to cases where conversion is not the object; for example, to a mortgage deed containing the usual power of sale. Here, if the mortgagee sells, the surplus over the loan results as REALTY to the real representative where the mortgagor has died before the sale (*Wright* v. *Rose*, 2 Sim. & St. 323).

(*c*) Under an ORDER of the Court, as from the date of the DECREE (*Hyett* v. *Mekin*, 25 Ch. D. 735).

iii. **Land into Money: effect of a direction to convert:—**

(*a*) *Generally.*

It passes the converted property to the personal representatives of a deceased owner.

The converted property will, where undisposed of and where the conversion is for all purposes of the will, be included under a residuary bequest. For example, where real estate is directed to be converted and form part of the

CONVERSION—*continued.*

personal estate (*Kidney* v. *Coussmaker*, 1 Ves. Jun. 436), or where the direction to sell is absolute and not limited to a particular purpose (*Singleton* v. *Tomlinson*, 3 App. Cas. 404, affirming S. C. nom *Watson* v. *Arundell*, 1 R. 11 Eq. 53).

The proceeds are, however, within the provisions of the Mortmain Act, 9 Geo. 2, c. 36; but see provisions of 54 & 55 Vict. c. 73 (Mortmain and Charitable Uses Act, 1891). "Charities, Gifts to."

(*b*) For **Fiscal** purposes.

1. Estate Duty and Probate Duty.

Real estate contracted in the lifetime of a deceased person to be sold is liable quâ personalty to Estate Duty, (*a*) **Probate** (and LEGACY) **Duty** (*Attorney-General* v. *Brunning*, 8 H. L. Cas. 243), on the ground that whatever the executor is entitled to receive *virtute officii* is legal assets, although recoverable only through a Court of Equity.

And it makes no difference that the contract is not one for immediate sale, but one which gives a person an OPTION of buying the property at a future date:—

Option to Lessee.

For example, the exercise by a LESSEE of an **option to purchase** operates as a conversion. A. leased land to B. for thirty-three years with an OPTION to PURCHASE within six years for £600. A. died within the six years, and B. after A.'s death, but before the expiration of said period, declared his option to purchase the land.

Held, the purchase-money lapsed to A.'s personal representatives—the conversion being held to operate as from the execution of the lease—and was therefore liable as personalty to both PROBATE and LEGACY DUTY (*Lawes* v. *Bennett*, 1 Cox. 167; *Collingwood* v. *Row*, 5 W. R. 484; *in re Isaacs*, *Isaacs* v. *Reginall*, (1894) 3 Ch. 506).

Where the lessee dies without having exercised the option, the beneficial interest in the lease with the benefit of the option, passes as part of his personal estate, but no subsequent exercise of the option will work a retrospective conversion as between the persons entitled to his realty and personalty respectively (*In re Adams and Kensington Vestry*, 27 Ch. D. 394).

The lessee cannot, after the premises are burnt down, exercise his option and claim the insurance money as part of his purchase (*Edwards* v. *West*, 7 Ch. D. 858).

Where lands so leased are **specifically** devised and subsequently subjected to the option of purchase, the personal representatives of the deceased take the purchase-money (*Weeding* v. *Weeding*, 1 J. & H. 424), for here the option effects a suspensory conversion of the land and a suspensory ademption thereof from the devisee, whether general or specific.

If so devised **after** having been previously subjected to the option of purchase, it is held to be the intention of the testator that the

(*a*) Note that real estate, whether or not it passes in specie, is liable to Estate Duty where it passes on a death on or after Aug. 2, 1894 (Finance Act, 1894, s. 1).

CONVERSION—*continued.*

DEVISEE is to take the land or the purchase-money, should the option be exercised (*Drant* v. *Vausse*, 1 Y. & C. C. C. 580; *Emuss* v. *Smith*, 2 De G. & Sm. 722). In this case the option effects a suspensory conversion, but no suspensory ademption.

Where, however, deceased dies intestate or has made a general devisee of his realty, the personal representatives are held to take the purchase-money.

The interim rents, until OPTION is exercised, go to **deceased's real representative** (*Townley* v. *Bedwell*, 14 Ves. 591).

Where a testator (dying after December 31, 1877, contracts to buy realty and dies before the purchase is completed and the vendor has a lien for the purchase-money, it would appear that the purchase-money as between the persons entitled to the real and personal estate is to be borne by the realty purchased (40 & 41 Vict. c. 34; *In re Cockroft*; *Broadbent* v. *Groves*, 24 Ch. D. 94).

Where A. conveys to B. and retains the right to re-purchase at a future time, *e.g.* six months after execution of the conveyance, and A. exercises the option, there is no conversion and the money passes to B.'s heir or devisee and not to his personal representatives (*Thornborough* v. *Baker*, 2 L. C. 1046).

Where real estate is directed to be sold by A., and by reason of the failure of the purposes for which such conversion was directed, the same devolves as undisposed of on B. as heir-at-law, B. takes the property as impressed with the character of personalty, and in default of reconversion by B., the land, though unsold, passes on B.'s death to his personal representatives and is liable to both PROBATE and LEGACY DUTY (*Attorney-General* v. *Lomas*, L. R. 9 Exch. 29).

Where a MARRIED woman by her will exercised a general power of appointment over real estate, which has been impressed with the character of personal estate, it was treated as personalty, and as such held liable to PROBATE DUTY (*In the goods of Gunn*, 9 P. D. 242).

As to conversion by the Court, see *infra*.

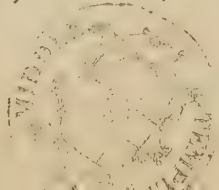
2. Legacy Duty.

See examples under head of PROBATE DUTY (*supra*).

Legacies and moneys payable out of or arising from the sale (and mortgage) of real estate where the testator has died on or after July 1, 1888, though taxable as successions to personalty and chargeable to the higher rates imposed by 51 Vict. c. 8, yet remain "legacies" and are liable to all the laws incidental to legacies. See "Additional Succession Duty."

Direction to sell.

Real estate directed to be sold is liable to Legacy Duty, though unsold (*Attorney-General* v. *Holford*, 1 Price, 427; *Williamson* v. *Advocate-General* (H. L.) 10 Cl. & Fin. 1); but, generally speaking, no conversion is effected unless the language is IMPERATIVE; and where a direction is imperative the bestowal of a discretion as to the time of sale does not affect it; the conversion operates at once (*Morris* v. *Griffiths*, 26 Ch. D. 601).



CONVERSION—*continued.*

A mere direction, however, that land is to be considered money or *vice-versâ* will not operate as a conversion, but an actual change of one form of property into another must be intended (*Johnson* v. *Arnold*, 1 Ves. Sen. 171; *Attorney-General* v. *Mangles*, *infra*; *Edwards* v. *Tuck*, 3 De G. M. & G. 40).

Real estate was devised upon trust to sell at such times as the trustees might think fit, with discretionary power to defer any sale so long as they might think expedient, and to have **any part valued** instead of being sold, and to **allot** such parts valued to the beneficiaries as part of their share; Legacy Duty held payable on the property actually sold (*Attorney-General* v. *Mangles*, 5 M. & W. 120).

Real estate directed to be sold and the proceeds invested in the purchase of other real estate was held not liable to Legacy Duty (*Mules* v. *Jennings*, 8 Exch. 830; *Heal* v. *Knight*, 8 Exch. 839, note).

Power to sell.

A mere power to sell will not effect a conversion (*Greenway* v. *Greenway*, 2 D. F. & J. 128).

Where, however, legacies payable in the ordinary course are to be paid after the conversion, the power amounts to a trust (*Burrell v. Baskerfield*, 11 B. 525).

The exercise of the usual power of sale in a mortgage deed does not convert, and the surplus over the loan results to the **real representative** where the mortgagor has died before the sale, and not to his personal representatives (*Wright* v. *Rose*, 2 Sim. & St. 323).

Legacy Duty is only payable upon the *corpus* in respect of the proceeds actually realized, Succession Duty being payable as in the case of a succession to "real property" in respect of any portion of the property divided in specie (*Attorney-General* v. *Mangles*, *supra*; *Attorney-General* v. *Simcox*, 1 Ex. 749; *Advocate-General* v. *Hamilton*, 18 Sco. Sess. Cas. 2nd. Ser. 636).

A power to sell may, however, be so worded as to amount to a direction to sell; for example, where the testator shows a clear intention that the legatees are to take the property as money (*Advocate-General* v. *Ramsay's Trustees*, Exch. Scot., 2 Cr. Mee & Rosc. 224, note; *Advocate-General* v. *Blackburn's Trustees*, 10 Sco. Sess. Cas. 2nd Ser. 166; *Weir* v. *Lord-Advocate*, 3 Sco. Sess. Ca. 3rd Ser. 1006).

Real estate devised to trustees with power to sell the same if expedient, is liable to Legacy Duty only when it appears from the terms of the will that the object contemplated by the testator was the distribution of the proceeds as personalty and not merely (*a*) the MORE BENEFICIAL MANAGEMENT of the property, or (*b*) the PAYMENT OF TESTATOR'S DEBTS AND LEGACIES (*Attorney-General* v. *Simcox*, *supra*; *Re Evans*, *infra*; *Advocate-General* v. *Smith*, 1 Macq. Ho. Lds. Cas. 760).

Where only a partial conversion is effected before the extinction of the power by the death of the trustees the property must be

CONVERSION—*continued.*

taken as it is found by those entitled according to its character (*Walter* v. *Maunde*, 19 Ves. 424).

A. devised real estate to trustees for the benefit of several persons for life, and after their death to be distributed among their children, and the will contained a power to the effect that it should be lawful for the trustees to sell the same, or part, etc., "as shall appear most expedient to my trustee or trustees for the time being towards the management of my property and affairs." A portion was sold shortly after testator's death for building purposes, such sale being for the advantage of the estate. The remainder after being subject to the trusts for ten years was sold under an Order of a Court for equity.

Held, that in neither case were the proceeds liable to Legacy Duty (*Re Evans*, 2 Cr. Mee. & Rosc. 206).

As to a discretionary power as to **time** of sale where the direction to sell is imperative, see *Morris* v. *Griffiths* (*supra*).

However, in the case of a discretionary power to sell real estate "the words of discretion may be so controlled by the other words of the will as to show that they are only in semblance words of discretion, but in reality words of direction" (*per Baron Alderson in Attorney-General* v. *Mangles*, 5 Mee. & W. 120).

For example, in an apparently discretionary power to lay out money in land the limitations may be such as are only ADAPTED to LAND, thus denoting testator's intention that land should be purchased and *vice versâ* (*Cowley* v. *Harstonge*, 1 Dow. 361; *Earlom* v. *Saunders*, Amb. 241).

However, where personalty only is disposed of, the fact that the limitations in the will are adapted only to land will not fetter the option given to the trustees so as to effect a conversion of the personalty (*Evans* v. *Ball*, 30 W. R. 899).

Nor is the option controlled where the personalty is limited to A., his heirs and assigns (*Atwell* v. *Atwell*, 13 Eq. 23).

It is, however, where limited to A. and his heirs for ever (*Cookson v. Reay*, 5 B. 22).

Where real estate is settled with the usual power to sell and reinvest in freeholds, with power of investment, *ad interim*, in personalty, a conversion is not effected by an investment in personalty of the proceeds of sale of the real estate (*In re Bird; Pitman* v. *Pitman* (1892), 2 Ch. 279.

Where real estate is devised to tenants-for-life and in remainder with a POWER to SELL for the purpose of re-investing the proceeds in the purchase of other real estate to be held upon similar trusts to the property sold, the fact that the proceeds are **not so invested** but are **actually received by the beneficiaries in the shape of personalty** does not make the proceeds liable to Legacy Duty (*Mules* v. *Jennings*, 8 Exch. 830).

Option to legatee.

Where an option is given to a legatee to take as part of his share of the residue a particular estate at a price specified by the testator, the exercise of such option does not make such realty

CONVERSION—*continued.*

(which was not subject to a direction or power to sell) liable to Legacy Duty (*Lord-Advocate* v. *Meiklam*, 22 Sco. Sess. Ca. 2nd Ser. 1427).

But where the testator devised real estate to his nieces with a proviso that his nephew should have the option of purchasing the same for £10,000 consols, and that upon his investing that amount for their benefit in the names of trustees the real estate should inure to the use of the nephew in fee simple, and that the nieces should convey the same to him accordingly, it was held on the option being exercised, that Legacy Duty was payable on the £10,000 consols (*Attorney-General* v. *Wyndham*, 1 Hurlst. & Colt, 563).

Option to lessee (see *ante*).

Conversion at the request of third person.

If the words of request are inserted for the purpose of enforcing the obligation to convert, the conversion will be considered to have been properly effected though no such request has been made (*Thornton* v. *Hawley*, 10 Ves. 129).

If, however, they are inserted for the purpose of giving a discretion to the persons concerned, and a sale takes place without such request, there will be no conversion (*Davies* v. *Goodhew*, 6 Sim. 585; see also *Burrell* v. *Baskerfield*, *ante*).

Sale by the Court.

Generally.

Of property of a deceased owner:—

Where real estate of a deceased owner is sold under a decree of the Court of Chancery and for purposes unconnected with the trust it has been held that Legacy Duty is not payable, although the will may have contained the power of sale (*Re Evans*, 2 Ca. Mee. & Rosc. 206; *Harding* v. *Harding*, 7 Jur. N. S. 906).

In *Hobson* v. *Neale*, 8 Ex. 368; 22 L. J. Ex. 175, it was held that if the Court of Chancery acted on its general power of ordering the sale of real estate to satisfy charges, Legacy Duty was not payable; but if the Court acted on the clause in the will, and in consequence of the will containing that clause, compelled the trustees to execute the power, Legacy Duty was payable, inasmuch as, in that case, the sale of the real estate was substantially by the direction of the testator.

Of property of living owner:—

In the case of an infant or lunatic the Court will not generally alter the state of the property so as to affect his successors, but it may do so when it is for the benefit of the infant or lunatic, and then all the consequences of conversion follow (*Exp. Grimstone*, Amb. 706).

Sales under various Acts.

(*a*) **Lands Clauses Consolidation Act, 1845** (8 Vict. c. 18).

A. the owner of land *sui juris* and possessing unfettered

CONVERSION—*continued.*

powers of dealing with the land receives a **notice to treat** from some railway or other company in conformity with the provisions of the above Act.

A. contracts to sell, the price being fixed; the land is thereupon converted, and if A. dies before receiving the purchase-money the same goes to his personal representatives and is liable to both PROBATE and LEGACY DUTY (*Watts* v. *Watts*, 17 Eq. 217; *Haynes* v. *Haynes*, 1 D. & S. 426).

A. refuses to sell. Here the Act authorizes the compulsory taking of the land, the purchase-money being paid into Court under s. 76, and when so paid is personal estate.

The effect, however, of the Act is **not to alter the devolution of the property** without the owner's consent.

Consequently, when the land of a corporation or of a tenant-for-life or of any other of the incapacitated persons specified in s. 69 (*e.g.* a lunatic or an infant) is so taken, the purchase-money retains the character of real estate and descends to the heir-at-law in case of the death of the owner intestate (*Re Tugwell*, 27 Ch. D. 309; dissenting from *Exp. Flamank*, Sim. N. S. 260; *Kelland* v. *Fulford*, 6 Ch. D. 491; *Re Barker*, 17 Ch. D. 241).

NOTE.—Where the parties are competent to convey, the money is paid into Court under s. 78 as personalty, and where the parties are under disability (*e.g.* infant or lunatic), under s. 69 as realty.

(*b*) **Partition Act, 1876 (39 & 40 Vict. c. 17).**

In the case of a sale (in lieu of partition) of an infant's property under a decree in a partition action there is a **reconversion,** and the proceeds of the sale retain their character of realty by virtue of s. 8 of Partition Act, 1868 (*Foster* v. *Foster*, 1 Ch. D. 588).

So also in the case of a lunatic (*Re Barker, supra*). On the death of the lunatic or infant intestate the property descends to his heir-at-law, but the heir will take it as realty or personalty according to its actual state of investment (*Mordaunt* v. *Benwell*, 19 Ch. D. 302).

In this case real estate was sold under a decree made in a partition suit, and the proceeds paid into Court. Three beneficiaries, A., B., and C., died intestate before the fund was distributed, leaving their father, F., as heir-at-law and sole next-of-kin. F. took out a grant of administration to each estate and then died intestate. It was held that he took his children's shares as their heir-at-law, but that he took them as money and that on his death the shares passed to his personal representatives and not to his heir-at-law.

Where, since the Partition Act of 1876, an order was made

CONVERSION—*continued.*

for the sale of a married woman's share in real estate with her consent or at her request the property was held to be converted (*Wallace* v. *Greenwood*, 16 Ch. D. 362). (*a*)

Sale by Order of the Court of Bankruptcy for payment of debts.

Before death of owner.

The realty is converted and the surplus after the payment of creditors goes as personalty.

After death of owner.

Unconverted, and the surplus goes to the heir who takes it as personalty, and therefore when once in his hands would on his death be liable to both PROBATE and LEGACY DUTY (*Banks* v. *Scott*, 3 Mad. 493).

As to cases of partial failure of the purposes of conversion (see *infra*).

3. Succession Duty.

Where the direction to convert is given by deed (or by WILL where the testator has died on or after July 1, 1888, 51 Vict. c. 8) duty will be payable on the gift of the converted property as a succession to personalty (16 & 17 Vict. c. 51, ss. 29, 32; 51 Vict. c. 8, s. 21, sub-s. 2).

S. 29 of the Succession Duty Act, 1853, enacts that—

The interest of a successor in **moneys to arise from the sale of real property** under any trust for the sale thereof, so far as it is not chargeable under the Legacy Duty Acts, is to be deemed personal property chargeable with Succession Duty, provided that if, subject to a trust for reinvestment in realty to which the successor would not be absolutely entitled, such moneys are to be deemed real property, and the successor's interest therein to be considered to be of the value of an annuity payable during his life, or for any less period during which he shall be entitled, equal in amount to the annual produce of the actual trust property at the time of his becoming entitled in possession.

Where the proceeds of sale of real estate, subject to a trust for sale and reinvestment in land, to which the successor in expectancy is entitled as tenant-in-tail, are disentailed and resettled upon trust for reinvestment in real estate on himself for life, subject to the prior life-interest under the original disposition, so that on his coming into possession upon the death of such prior tenant-for-life, he takes a life-interest only, the duty is levied on such proceeds of sale for the life of the successor, and not on the capital. The original disposition is at an end when the disentailing deed and resettlement are executed, save for the purpose of determining the rate of duty payable, the resettlement being the disposition conferring the succession, and the succession is an estate for life.

4. Account Duty.

Account Duty is not payable on real property, but only on personal or moveable property including leaseholds (44 Vict. c. 12, s. 38; 52 Vict.

(*a*) "Where the Court has power to sell an infant's real estate, and orders it to be sold, the order operates as a conversion, and the estate then becomes personalty;" but "it is the practice of the Court to provide against the consequences of conversion;" in other words, the practice of the Court reconverts what the law converts. Dictum of Sir G. Jessel in this case.

CONVERSION—*continued.*

c. 7, s. 11). Where, however, real estate is settled by a voluntary deed upon trust to sell and pay the income to the settlor during his life, and on his death over, the real estate, whether actually sold or not, will be liable to Account Duty on the death of settlor after June 1, 1881.

A., by voluntary settlement (dated May 22, 1885), assigned freehold hereditaments to trustees in trust, on the request in writing of himself and wife or of the survivor, to sell the hereditaments, and by another settlement of even date he declared certain trusts of the proceeds of sale, viz. to pay the income to him for life, afterwards to his wife for life, with remainders in favour of the children, etc.

On A.'s death in 1887, leaving a widow and children surviving, no sale had taken place.

It was held that the property must be treated as having been converted at the date of the settlement, and that therefore Account Stamp Duty was payable (*Attorney-General* v. *Dodd* (1894), 2 Q. B. 150).

iv. Money into Land: effect of a direction to convert.

(*a*) *Generally.*

1. Descends as land to the legal heir in case of an intestacy.

A. devises £8000 to be laid out in the purchase of land, and settled on B. for life, remainder to C. and his heirs, but if C. should die in B.'s lifetime, then to D. and his heirs. C. and D. both predecease B., the money not being laid out upon B.'s death; this money was considered as land and held to go to the heirs of D. and not to his executors (*Scudamore* v. *Scudamore*, Pre. Ch. 543).

2. Is included in a general devise.
3. Is subject to tenancy by the curtesy, and since 1833 to dower (*Sweetapple* v. *Bindon*, 2 Vern. 536).
4. Escheat to the Crown, s. 4 of Intestates Act, 1884.

(*b*) For **Fiscal** purposes.

Where, by order of the Court in lunacy, money of a lunatic was laid out in land, the land on the death of the lunatic was held to be part of his PERSONAL ESTATE and as such liable to PROBATE DUTY (*Attorney-General* v. *Marquis of Ailesbury*, 12 App. Ca. 672; 16 Q. B. D. 408).

See also *Advocate-General* v. *Anstruther* (13 Sco. Sess. Ca., 2nd Ser. 450) where savings from the rents of an infant's real property, invested in realty, were held to pass to his next-of-kin as personalty.

Money directed by will, or deed, to be laid out in land.

S. 19 of 36 Geo. 3, c. 52, enacts that any sum of money or personal estate, directed to be applied in the purchase of real estate, shall be charged with and pay duty as personal estate; unless the same shall be so given as to be enjoyed by different persons in succession, and then each person entitled thereto in succession shall pay duty for the same in the same manner as if the same had not been directed to be applied in the purchase of real estate, unless the same shall have been actually applied in the purchase of real estate before such duty accrued; but no duty shall accrue in respect thereof, after the same shall have been actually applied in the purchase of real estate, for so much thereof as shall have been so applied: Provided, nevertheless, that in case before the same or some part thereof

CONVERSION—*continued.*

shall be actually so applied, any person or persons shall become entitled to an estate of inheritance in possession in the real estate to be purchased therewith, or with so much thereof as shall not have been applied in the purchase of real estate, the same duty which ought to be paid by such person or persons, if absolutely entitled thereto as personal estate by virtue of any bequest thereof as such, shall be charged on such person or persons, and raised and paid out of the fund remaining to be applied in such purchase.

1. The land to be conveyed to A. in fee simple. Here the money directed to be so laid out is chargeable with duty on the *corpus*; as an absolute legacy where the gift is by will; as a succession to personalty where the gift is by deed, and where it passes by a death.
2. The land to be conveyed to different persons in succession; for example, upon trust to A. for life, remainder to his first and other sons successively in tail male. Here, whether the gift be by will or deed, duty is payable by way of annuity. Where, however, the gift is by will, and before the money is so laid out, any person becomes entitled to an estate of inheritance in possession (*a*) in the real estate, the person so entitled is chargeable to duty in respect thereof as in the case of an absolute legacy (36 Geo. 3, c. 52, s. 19; *De Lancey* v. *The Queen*, L. R. 7 Ex. 142).

For Example.—Testator directs money to be laid out in land to be conveyed to A. for life, remainder to B. in fee simple. B. predeceases A. and leaves all his property to C. C. takes as a legacy under B.'s will should he survive A.

It was held, *inter alia*, in *Lord-Advocate* v. *Dunlop's Trustees* that the words "shall become entitled" mean "shall become entitled to an absolute interest in the money bequeathed to be laid out in the purchase of land."

In the above case testator had directed his trustees—

1. to convert the residue of his estate (moveables).
2. to accumulate the income for a period of six years from the death.
3. to lay out £12,000 in building a house at Doonside.
4. to entail (at the expiration of the six years) the land purchased on A. and his male heirs. The institute or heir of entail in possession to be entitled to receive the interest and proceeds of the entire residue of his estates.

A. disentailed, paying compensation to the next heirs. It was held:—first that duty was payable on the whole residue notwithstanding A. did not take his absolute interest exclusively under the will, and that no deduction could be taken of the compensation paid to the next-of-kin (19 Sco. Sess. Ca. 4th ed., s. 461, affirmed on appeal (1894), A. C. 291).

(*a*) A., a minor, becomes entitled in possession to an estate tail in the lands to be purchased. Duty is payable on the money as personal estate (*Attorney-General* v. *Twyford*, Trevor's Taxes on Succession, 4th ed., 113).

Moneys directed to be laid out in land are settled on A. for life, remainder to his first and other sons in tail, remainder to his right heirs. A. dies without issue. Duty is first payable on his life interest and on his death upon the *corpus* of the moneys (if not so laid out) absolutely.

CONVERSION—*continued.*

It was subsequently decided that no deduction could be allowed of the £12,000 spent in erecting the house, but a sum of £21,000 which had been laid out in the purchase of land before the right of A. thereto had emerged was allowed as a deduction (21 Sco. Sess. Ca. 4th Ser. 348).

See also *Lord-Advocate* v. *Macfarlane and Others*, 29 Sco. L. R. 393.

The interest of any successor in personal property subject to any trusts for the investment thereof in the purchase of real property to which the successor would be absolutely entitled, so far as it is not chargeable under the Legacy Duty Acts, is chargeable with Succession Duty as personal property; but if the successor would not be absolutely entitled to the realty, the property, so far as it is not chargeable under the Legacy Duty Acts, is chargeable with Succession Duty as realty; and each successor's interest is to be considered to be of the value of an annuity payable during his life, or for any less period during which he shall be entitled, equal in amount to the annual produce of the actual trust property at the time of his becoming entitled in possession (s. 30 of Succession Duty Act, 1853).

Personal estate, subject to a power to invest in real estate, which, when purchased, is to be held upon trust for resale, with a declaration that the real estate so purchased is to be considered as money, is charged with duty on its principal value when it comes to the successor's hands, notwithstanding it be then actually invested in real estate; for if the successor had died in the lifetime of the tenant-for-life, it would have passed to his executors or administrators. It is a succession to personal estate under ss. 1 and 2, this section having reference only to personal property subject to a trust for investment in real estate to be treated as such.

Where the deceased died after Aug. 1, 1894, see "Succession Duty."

v. **Effect of the failure of the objects for which conversion was directed:**—

Total failure. (*a*)

There is NO CONVERSION, whether the conversion be directed by will or by deed.

Land directed to be sold will go to the heir (and to the maternal heir if the testator was seized of the estate *ex parte maternâ*), and if dead, to his real representatives, and even if the land be sold the proceeds of sale will devolve as realty (*Davenport* v. *Coltman*, 12 Sim. 610).

Money to be laid out in land will result to the testator or settlor in its unconverted form.

Partial failure. (*a*)

(*a*) Direction by **will.**

Land to be sold.

The undisposed of proceeds of sale go to the HEIR, and succession

(*a*) Where T. devises his real estate to be sold and the proceeds to be divided between A. and B., the object of the conversion is obviously for the purpose of division.

If A. predeceases T., then his (A.'s) moiety will be taken by the heir-at-law as money, and not as land. But if A. and B. both predecease T., the heir-at-law will take as land.

"If, therefore, the real estate is directed to be sold with a view to a disposition made by a will, and that disposition fails, although the real estate has *de facto* been sold, yet the proceeds will retain the quality of real estate for the purpose of ascertaining the ownership, *i.e.* the title of the heir, although it is true that when you pay it over to the

CONVERSION—*continued.*

duty is payable on the proceeds as "personalty" and not as "real property."

A. bequeathed several legacies, and ordered his real and personal estate to be sold, his debts and legacies to be paid thereout, and the residue to go to certain legatees in the proportion of their legacies. B. and C., two of the residuary legatees, predeceased A.

Their shares lapsed, and so far as they represented personal estate were decreed to go to A.'s next-of-kin; and so far as they represented REAL ESTATE to the HEIR-AT-LAW (*Ackroyd* v. *Smithson*, 1 L. C. Eq. 949). To defeat the heir there must be either:—

(*a*) A GIFT OVER (*Fitch* v. *Weber*, 6 Ha. 146)—a mere declaration that the proceeds of sale shall not lapse for the benefit of the heir will not defeat his right; or

(*b*) It must appear that testator intended an "OUT and OUT" conversion to all intents—that is, not merely for the purposes of the will, but whether such purposes took effect or not, so as to preclude all questions between his real and personal representatives after his death (*Cruse* v. *Barley*, 3 P. Wms. 22; *Taylor* v. *Taylor*, 3 De G. M. & G. 190; *Robinson* v. *Governors of London Hospital*, 10 Hare, 19).

For example, where a testator directed that the surplus proceeds of real estate were to be treated as personal estate, and given to the executors, they were held to take in trust for the next-of-kin (*Countess of Bristol* v. *Hungerford*, 2 Vern. 645).

The doctrine of *Ackroyd* v. *Smithson* does not, however, apply to a sale by the Court at any rate where the heir-at-law has consented to such sale (see *infra*).

In what character (*i.e.* as realty or personalty) the heir takes.

Where it is NECESSARY to SELL the land for the purpose of the trust and there is only a PARTIAL disposition (as in the above example) of the proceeds thereof, the HEIR takes the undisposed-of proceeds as MONEY and the same will go to his personal representatives even though the land be not sold during his lifetime, PROVIDED THAT IT BE AFTERWARDS ACTUALLY SOLD in the due execution of the trust (*Smith* v. *Claxton*, 4 Mad. 492; *Wright* v. *Wright*, 16 Ves. 188; *Jessop* v. *Watson*, 1 My. & K. 665).

So, where realty and personalty are converted, and form a blended fund, and are charged *pro ratâ* with the payment of testator's debts, the heir takes the realty as money on failure of all the other purposes of the conversion (*Attorney-General* v. *Lomas*, L. R. 9 Ex. 29).

heir, in the hands of the heir it has the character of money, and no longer the character of real estate. So, in like manner, if money is directed to be invested in land, and the land is disposed of by the will and the money is so invested, but the disposition fails, the investment thus made for the purposes of the will has no effect in altering the quality of the property; but the property, even in the shape of lands, retains its pristine and original quality of personal estate for the purposes of determining the ownership" (*Bective* v. *Hodgson*, 10 H. L. 667, *per* Lord Westbury, C.).

CONVERSION—*continued.*

Money to be laid out in land.

By analogy to the case of *Ackroyd* v. *Smithson* (*supra*), it was held that the undisposed-of interest in the money will result for the benefit of the next-of-kin (*Cogan* v. *Stephens*, 1 Beav. 482, n.).

In what character the next-of-kin take.

The next-of-kin take the undisposed-of interest according to its actual condition at the time of the devolution. Therefore, if the next-of-kin having become entitled to a freehold estate dies there is no equity to change the real estate into anything else on his death; it will go to the devisee of the real estate or to his heir-at-law if he has not devised it, and will pass as real estate. The principle is that where you trace property into a man, there is no equity between his different classes of representatives as to altering the position in which that property is, per JESSEL, M.R. (*Curteis* v. *Wormald*, 10 Ch. D. 172; over-ruling *Reynolds* v. *Godlee*, 1 Johnson, 536, 583; *Scales* v. *Heyhoe*, 1892, 1 Ch. 379).

(*b*) Direction by deed.

Land to be sold.

The realty is converted into personalty at the date of the deed and whatever results, results to the settlor in its CONVERTED form, or to his personal representatives (*Clarke* v. *Franklin*, 4 K. & J. 263; *Griffiths* v. *Ricketts*, 7 Hare, 299).

Money to be laid out in land.

The money results to the settlor in its converted form and devolves on his death to his HEIR or personal representatives according to its then actual condition (*Wheldale* v. *Partridge*, 8 Ves. 236).

The apparent distinction between partial failure under a WILL and under a DEED as to the application of the doctrine of resulting trusts arises from the fact that a WILL operates only from the death of the testator, a DEED from the moment of execution.

(*c*) **Conversion by the Court.**

The rule in *Ackroyd* v. *Smithson* (*supra*) does not apply to the case of a sale under an order of the Court.

Where a sale is ordered by the Court in an administration action to which the trustees are defendants, then the land sold is converted from the date of the order, and there is no equity to reconvert the surplus (*Hyett* v. *Mekin*, 25 Ch. Div. 755; *Arnold* v. *Dixon*, L. R. 19 Eq. 113).

This rule, however, is subject to statutory provisions (see sales under the various Acts, *supra*) applying to particular cases. For example, in the case of a sale of an infant's real estate under a devise in a partition suit the proceeds were by s. 8 of the Partition Act, 1868, treated as realty, and in the case of a sale of the separate estate of a married woman under similar circumstances the question depended on her consent. If she consented there was a conversion, if not, no conversion (*Foster* v. *Foster* (*supra*); *Mildmay* v. *Quicke*, 6 Ch. D. 553; *Kelland* v. *Fulford*, 6 Ch. D. 491; *Wallace* v. *Greenwood* (*supra*)).

CONVERSION—*continued.*

(*d*) **Mixed funds.**

1. Where realty and personalty are blended and treated as one fund, undisposed-of proceeds pass to the residuary legatee (*Durour* v. *Motteux*, 1 Ves. Sen. 320).

   Where, however, there is no residuary legatee, or where the sole residuary legatee, or where one or more of several residuary legatees (who take equally or in definite proportions), predecease the testator the rule in *Ackroyd* v. *Smithson* (*supra*) applies; the undisposed-of shares, so far as they are attributable to the personal estate, resulting to the next-of-kin, and so far as attributable to the real estate to the heir-at-law (*Jessop* v. *Watson* (*supra*); *Salt* v. *Chattaway*, 3 Beav. 576; *Taylor* v. *Taylor*, 22 L. J. Ch. 742).
2. Where realty and personatly are treated as distinct funds, the undisposed-of interests in the realty will not result to the residuary legatee (*Dixon* v. *Dawson*, 2 S. & St. 327).
3. Nor where the realty directed to be converted and the personalty are NOT BLENDED and are treated as distinct funds (*Maugham* v. *Mason*, 1 V. & B. 410).

vi. **Partnership realty.**

Lands purchased out of partnership funds for partnership purposes, or which are substantially involved in the business, are treated in equity as personalty and are held liable to PROBATE and LEGACY DUTY (*Phillips* v. *Phillips*, 1 My. & K. 649; *Waterer* v. *Waterer*, L. R. 15 Eq. 402; *Forbes* v. *Stevens*, L. R. 10 Eq. 178; *Attorney-General* v. *Hubbuck*, L. R. 13 Q. B. D. 275). See Partnership Act, 1890 (53 & 54 Vict. c. 39, s. 22), and "Partnership."

vii. **Conversion of wasting securities.**

As a general rule a trustee must sell PERISHABLE or WASTING PROPERTY (*e.g.* leaseholds), so that CESTUIS QUE TRUSTENT whose interests are deferred may participate in the trust property, as well as those whose interests are immediate; testator's intention, however, is, where ascertainable, to prevail (*Howe* v. *Lord Dartmouth*, 7 Ves. 137). The conversion should in general be effected within a year from the testator's death (*Grayburn* v. *Clarkson*, L. R. 3 Ch. App. 605; *Hiddeigh* v. *Denysson*, 12 App. Ca. 624).

On the other hand a tenant-for-life is entitled to have reversionary property converted, though the reversion is dependent on his own life-interest (*Wilkinson* v. *Duncan*, 23 B. 469).

The tenant-for-life will be entitled to enjoy the property IN SPECIE.

(*a*) Where the gift is not merely of a RESIDUE but of specific enumerated things.

(*b*) Where the gift is of pure RESIDUE, but the testator shows that he contemplates specific enjoyment, *e.g.*:—

1. Where the property is specifically given over at the death of the tenant-for-life.
2. Where there is an express trust to convert at the death of the tenant-for-life.
3. Where there is a power to sell with the consent of the tenant-for-life, or to renew leaseholds.

See, further, Theobald on Wills, 4th edition; Snell's Equity, 11th edition, and H. A. Smith's Equity, 2nd edition.

CO-PARCENARY.

Co-parcenary arises either by common law or particular custom. By common law, as where a person seized in fee simple or fee tail dies, and his next heirs are two or more females, in this case they shall all inherit. Co-parceners by particular custom are where lands descend as in gavelkind to all males in equal degree, as sons, brothers, uncles, etc.

COPYHOLDS.

1. Are "real property" for the purposes of the Succession Duty Act (16 & 17 Vict. c. 51, s. 1).
2. In estimating the value of a succession to copyholds, allowance is to be made in respect of *fines* incident thereto (s. 28), but not until they have been actually paid; for fines do not carry interest, and might not be paid during the whole course of the successor's life.

The sum to deduct (in the form No. 6) in respect of such payment is the annuity which for the life, or other limited interest of the successor, would, according to the Tables annexed to the Succession Duty Act, be equal in value to the fine. For example, where the successor (aged 50) takes in fee or for life, and the fines paid amount to £24 17*s.* 2*d.*, the deduction to take is £2 (Table I.).

Where the succession opens by a death on or after Aug 2, 1894, and the successor takes in fee the amount paid, £24 17*s.* 2*d.*, would be deducted from the capital value.

Where trustees are admitted, the deduction will be a percentage on the amount paid to the steward of the manor. This will cover the admission of the remainderman should the trustees survive the tenant-for-life.

Copyhold lands cease to be held "according to the custom of the manor" when extinguished or enfranchised.

(i.) **Extinguishment.**

Extinguishment occurs where the copyholder surrenders to the use of the lord, or without declaring any use; or where the lord conveys to the copyholder for an estate of freehold, or even a term of years, the copyhold being merged and extinguished in the freehold.

Where, however, the lord acquires by descent, forfeiture, escheat, etc., and he does no act to show his intention to destroy the copyhold tenure, it is only suspended, and on a regrant is still copyhold (Copyhold Act, 1894, s. 81).

(ii.) **Enfranchisement**

May take place by common law, when it is effected by agreement and avails only to the extent (estate for life, etc.) of the landlord's interest; or by statute, Copyhold Act, 1894, 57 & 58 Vict. c. 46, which consolidates the prior Acts of 1841, 1843, 1844, 1852, 1858 and 1887).

The statutory enfranchisement may be voluntary, by agreement, followed by a conveyance, between lord and tenant with the consent of the Copyhold Commissioners (now the Board of Agriculture).

Provided proper notice has been given to the remaindermen or reversioners it is complete, though the lord have only a limited interest (estate for life, etc.).

Or the enfranchisement may be compulsory, and may be compelled by either lord or tenant (s. 1). When enfranchised the land ceases to be subject to any special copyhold custom of descent; for example,

COPYHOLDS—*continued.*

as regards persons married since an enfranchisement under the Act of 1894, enfranchisement extinguishes any special custom as to curtesy, and subjects the land to the general law of curtesy.

If the tenant (expectant successor) compels it, the enfranchisement is to be a gross sum of money paid at the time of the completion of the enfranchisement, or charged on the land by way of mortgage. No deduction, however, can be taken by the copyholder in his succession account (form No. 6) for any sum so paid where the duty paid is based on the annual value; otherwise where duty is paid on the principal value (form No. 6–1). Where the lord compels it, the enfranchisement is to be an annual rent-charge, issuing out of the lands enfranchised, and in this case the copyholder is entitled to an allowance for such rent-charge, as well as for any fines paid on admittance (ss. 28 and 35 of 16 & 17 Vict. c. 51).

Where A. (aged 40) succeeds to copyhold property (net annual value, £100) held for a life, aged 30, the duty is assessed on the value (£1252 1*s.*, Table II.) for the joint continuance of the two lives (40 and 30), unless compounded for under the provisions of s. 39 of the Succession Duty Act. Where, however, the succession arises on a death after Aug. 1, 1894, the duty is assessed on the value (Table I.) for the life, aged 30.

Where such property is held for two lives (aged 30 and 35), the value of A.'s succession is arrived at thus:—Find from Table II. the value (£1302) for the joint continuance of the lives (aged 30 and 35); then find from Table I. the value (£1300 9*s.* 6*d.*, age 48), which approximates the nearest for the same annual value to £1302. The value of A.'s succession is the value (£1085 2*s.*, Table II.) of an annuity of £100 for the joint continuance of the two lives, 40 and 48. Where, however, the succession arises on a death after Aug. 1, 1894, the duty is assessed on the value (Table II.) for the joint continuance of the lives (aged 30 and 35).

3. Copyholds are susceptible of the same limitations of interest as freeholds, and the devolution of copyholds of inheritance is, subject to its being the custom of the manor (*Muggleton* v. *Barnett*, 1 H. & N. 282; 2 H. & N. 253), governed by similar canons of descent, the Inheritance Act (3 & 4 Will. 4, c. 106) applying to them. The heir of a deceased copyholder may exercise any acts of ownership immediately after the death of his ancestor; but the land is considered to belong to the lord until he is admitted.

Copyholds will pass under a general devise of the testator's lands (*Butler* v. *Butler*, 28 C. D. 66).

The customary estate descends to the heir until the devisee is admitted.

Where directed to be sold, or devised to trustees subject to a power to sell, the purchaser can claim admission without the previous admittance of either the trustee or the heir.

4. Copyholds are not within the statute De Donis. However, in certain manors a custom to entail exists. A devise of copyholds in words which would create an estate tail in freeholds gives a fee simple conditional on the birth of issue, where the custom to entail does not exist.

The Statute of Uses does not apply to copyholds. A devise, therefore, of copyholds to A. in trust for B. gives A. the legal estate (*Houston* v. *Hughes*, 6 B. & C. 403). Copyholds are within Locke King's Act (*q.v.*).

The legal estate in mortgaged copyholds descends, in case of the mortgagee's intestacy, to his heir, who, in equity, holds such legal estate in trust for the

COPYHOLDS—*continued.*

personal representatives of the deceased mortgagee (Copyholds Act, 1887, 50 & 51 Vict. c. 73, s. 44). It was found prejudicial to the beneficiary in the case of copyholds for trust and mortgage estates to vest in the personal representatives (see Conveyancing Act, 1881, s. 30); for where a testator appointed two or more executors, the fine payable would be greater on the admittance of two or more joint tenants than on a single admittance. So s. 45 of the Act of 1887 enacted that s. 30 should not apply to copyholds.

Dower and curtesy do not exist in copyholds unless by special custom. If there is dower it is called freebench, and varies in amount. Generally it is a life interest in a third of the copyhold lands of which the husband died seized for a customary estate of inheritance in possession; sometimes of a life interest in the entirety. The Dower Act of 1834 does not apply to copyholds.

The Wills Act (7 Will. 4, and 1 Vict. c. 26) includes copyholds in its provisions, and they are now devisable as other property without a surrender.

The Act also allows (s. 3) an unadmitted surrenderee or devisee, and a tenant for *autre vie* to devise their interests. But an unadmitted surrenderee cannot convey *inter vivos*, as his estate only commences from his admittance, although he can assign his equitable interest.

The most common incidents of copyholds are as follows:—

They are technically held at the will of the lord.

The tenants cannot commit waste, as the mines, minerals, and timber belong to the lord; and they cannot lease the land for more than a year without the lord's license, or a custom.

Copyholds are, moreover, subject to quit-rents, fines, and heriots.

Alienation of Copyholds.

The ordinary mode of conveyance of legal estates and interests in copyholds is by surrender to the lord of the manor (by delivery to him of a rod or other symbol of possession, or by such other ceremony as the custom of the manor may prescribe) to the use of the alienee and his heirs, or to such other uses as are expressed in the surrender; the surrenderee is then entitled to be admitted by the lord as his tenant pursuant to the surrender, and after admittance he is bound to pay the customary fine. If the admittance be postponed, the estate continues vested in the surrenderer, and the admittance, when it takes place relates back to the time of the surrender.

Land Transfer Act, 1897.

S. 1 (4) enacts that "the expression 'real estate' in this part of the Act shall not be deemed to include land of copyhold tenure or customary freehold in any case in which an admission, or any act by the lord of the manor is necessary to perfect the title of a purchaser from the customary tenant."

COPYRIGHT

Is the exclusive right of printing or multiplying and selling copies of an original work or composition, given by statute, but limited in duration.

It is personal property passing to the author's personal representatives, and liable to Probate Duty, or Estate Duty and Legacy Duty. Copyright in a book endures for the life of the author and for seven years after his death; but if the term of seven years expire before the end of forty-two years from the first publication, it endures for such period of forty-two years, also, if the book is published after the author's death, the copyright endures for forty-two years from such publication (5 & 6 Vict. c. 45, s. 43).

COPYRIGHT—*continued.*

Where the copyright of a work belongs to the proprietor it will endure for the same term as is given by the Act to authors (s. 18).

CORPORATE BODY. See "Body Corporate."

CORPORATION DUTY.

A stamp duty imposed by 48 & 49 Vict. c. 51 (s. 11) on property of bodies corporate and unincorporate, at the rate of £5 per cent. on net annual value, income, or profits accrued in respect of all real or personal property vested in such bodies, not specifically exempted from duty.

Prior to 1895–1896 the Corporation Duty was dealt with under the head of "Stamp Duties." It is now treated by the Commissioners of Inland Revenue as a Death Duty, the duty being in the nature of, or an equivalent for, a Death Duty on corporate property.

Amount realized (1887–1898):

Year ending March 31,		1887	..	..	..	£34,063
,,	,,	1888	..	..	..	£42,521
,,	,,	1889	..	..	..	£40,734
,,	,,	1890	..	..	..	£41,063
,,	,,	1891	..	..	..	£41,354
,,	,,	1892	..	..	..	£39,433
,,	,,	1893	..	..	..	£37,260
,,	,,	1894	..	..	..	£37,836
,,	,,	1895	..	..	..	£39,401
,,	,,	1896	..	..	..	£39,672
,,	,,	1897	..	..	..	£40,189
,,	,,	1898	..	..	..	£41,723

CORPOREAL HEREDITAMENT. See "Hereditament."

CORPSE.

Directions by a testator disposing of his body are invalid, the executor being entitled thereto (*Williams* v. *Williams*, 20 C. D. 659).

CORRECTIVE AFFIDAVIT. See "Rectification of Duty."

COSTS.

1. Costs of administration proceedings in the United Kingdom are not a deduction against Probate Duty or Estate Duty.

   Costs (additional) of administering or realizing property abroad may, if the Commissioners are satisfied, be allowed (up to 5 per cent. on the value of such property) as a deduction against Estate Duty (Finance Act, 1894, s. 7 (3)).

   Costs of litigating the title to property by a successor are not allowed as a deduction in his succession account.

   Costs of trustees of rendering the necessary accounts for paying the Succession Duty in respect of a life estate are payable by the tenant for life (*Cowley (Earl)* v. *Wellesley*, 35 Beav. 642).

   The costs of paying an infant's legacy into Court come out of the estate, but the legatee must bear the costs of obtaining payment out of Court (*In re Cawthorne*, 12 Beav. 56; *In re Jones*, W. R. 1857–58, 336).

2. Costs of an administration action are not debts within the meaning of a charge of debts, but will be included in a direction to pay testamentary expenses (*Stringer* v. *Harper*, 25 B. 585; *Penny* v. *Penny*, 11 C. D. 440).

COSTS—*continued.*

Costs of administration include, *inter alia*, the costs of getting in foreign personalty including the payment of any foreign duties (*Peter* v. *Stirling*, 10 C. D. 279), and have priority over other costs directed to be paid out of the estate (*In re Price*, 31 C. D. 485).

The personal estate bears the cost of administration, unless testator has appointed a particular fund. Where the costs have been increased by the administration of the real estate the additional cost must be borne by the realty (*Ripley* v. *Moysey*, 1 Kee. 578; *In re Middleton; Thompson* v. *Harris*, 19 Ch. D. 552).

3. Where costs fall to be paid out of a fund subject to a power they will be apportioned *pro ratâ* between the appointed and unappointed part (*Moore* v. *Dixon*, 15 C. D. 566).

Costs of administration are paid out of the mixed fund rateably where the residue consists of converted realty and personalty (*Luckcraft* v. *Pridham*, 48 L. J. Ch. 636).

Also apportioned rateably where the administration suit comprises real as well as personal estate (*Bunnett* v. *Foster*, 7 B. 544).

4. Costs of deposit of copy of document under the provisions of 52 Vict. c. 7.

S. 13 (4) enacts that the costs of depositing a copy of a document and obtaining a receipt under this section shall be deemed costs duly incurred by a trustee, executor, or administrator, or any other person in the execution of his duties as trustee, executor, or administrator, or otherwise, under the document.

5. The costs of an appeal to the High Court shall be in the discretion of the Court (Finance Act, 1894, s. 10 (1, 2, 3)).

6. Costs of Solicitor-Trustee. See "Solicitor."

COUNTY COUNCIL.

1. Valuers for Estate Duty, to be appointed, and scale of payment fixed by; Finance Act, 1894, s. 10 (6).

2. Gifts of pictures, prints, books, etc., to, may be exempted from "the Estate Duty or any other duty leviable on or with reference to death" (s. 15 (2)).

COUSIN.

Bequests to "cousins" of testator means, *primâ facie*, the children of his uncles and aunts (*Saunderson* v. *Bayley*, 4 My. & Cr. 56).

First cousins, that is, persons who have the same grandfather or grandmother, are chargeable to Legacy Duty at the rate of five per cent., and to Succession Duty at the rate of five per cent. or six-and-a-half per cent.

Second cousins, that is, persons having the same great-grandfather or great-grandmother, are chargeable to Legacy Duty at the rate of six per cent., and to Succession duty at the rate of six per cent. or seven-and-a-half per cent. (55 Geo. 3, c. 184, sch., Part III.; s. 10 of 16 & 17 Vict.c. 51; s. 21 of 51 Vict. c. 8). See also "Rates of Duty."

Description of consanguinity in Death Duty Accounts:—

First Cousin	1.	Descendant of a brother of a father of the deceased.
	2.	„ „ „ mother „
	3.	„ „ sister of a father „
	4.	„ „ „ mother „
Second Cousin	1.	Descendant of a brother of a grandfather of the deceased.
	2.	„ „ „ grandmother „
	3.	„ „ sister of a grandfather „
	4.	„ „ „ grandmother „

COVENANT.

Succession Duty and Legacy Duty.

A covenant to pay money on death is held to be a disposition within s. 2 of 16 & 17 Vict. c. 51, and to create a "succession."

A., under a settlement made on the marriage of his daughter B., entered into a COVENANT to pay after his death £2000 to the trustees of the marriage settlement, to be held for the benefit of B. during her life, and on B.'s death to her husband (C.) for life, should he survive, with an absolute interest to the children.

Such a COVENANT was held to be a "disposition" (s. 2), and to create a succession. Where, however, the covenantor has paid the money to the trustees in his lifetime there appears to be no claim for Succession Duty under s. 2; (*a*) (*Lord-Advocate* v. *Roberts' Trustees*, 20 Sco. Sess. Ca. 2 Ser. 449).

A. covenanted to pay to trustees of settlement at such time or times during his life as he should think fit, or within twelve months after his death, the sum of £10,000 "free from all deduction whatsoever" in favour of his married daughter B. He also covenanted to pay to them in the mean time an annuity of £200 upon similar trusts.

The covenant was satisfied by the payment by his (A.'s) executors of the sum of that precise amount without any provision being made for the discharge of Succession Duty. The Succession Duty being by s. 42 chargeable on the interest of the successor was payable by the trustees of the settlement, and not by the executors of the covenantor (*Day* v. *Turnell*, *In re Higgins*, 29 Ch. D. 697, 31 Ch. D. (C. A.) 142).

By deed making provision for an endowment the donor, A., COVENANTED that he or his executors or administrators after his death would transfer certain bank stock and certain shares into the names of trustees, and by a deed of even date he declared that the trustees should stand possessed of such shares and stock upon trust for certain charitable purposes. A. by a subsequent deed COVENANTED that he or his executors or administrators after his death would transfer a further amount of bank stock into the names of trustees and declared that they should stand possessed thereof upon similar trusts. On A.'s death his executors transferred the stock and shares into the names of the trustees (*Attorney-General* v. *Montefiore*, 21 Q. B. D. 461; 37 W. R. 237).

Held, that the stock and shares so transferred were liable to Succession Duty (*In re Higgins*, discussed).

The payment of the sum covenanted to be paid, in the lifetime of the covenantor, is a complete answer to any claim for succession on his death.

A covenant in a settlement to leave by will is satisfied by a legacy to the amount, though followed by a general direction to pay debts. A covenant to bequeath a fixed sum of money constitutes a specialty debt against the covenantor's estate, and is not satisfied by the mere insertion of such a bequest in his will. A covenant by A. to secure a specified sum of money to his children creates a debt (*Lord-Advocate* v. *Hagart's Executors*, 10 Sco. Sess. Ca., 3rd Ser., 62).

A person who has covenanted to bequeath or otherwise provide that a share of his estate (as distinguished from a fixed sum) shall go to the covenantee, fulfils his covenant by bequeathing the share to the covenantee, who then stands in the same position as any other legatee (*Jervis* v. *Wolferstan*, 18 Eq. L. R. 18).

(*a*) Where, however, such a covenant contains a provision for the payment of interest on the fund at a given rate to commence immediately, no succession will arise on the death (before June 1, 1889, see 52 Vict. c. 7, s. 10, sub-s. 1) of the covenantor.

COVENANT—*continued.*

However, the amount is not allowed as a debt against Probate (or Estate) Duty, for where the covenantor had spent his whole estate in his lifetime, there would be no remedy. See also *Marshall's Executors* v. *Lord-Advocate* (1 Sco. Sess. Ca. 4th Ser. 847); *Attorney-General* v. *Murray* (20 L. R. Ir. 124).

A gift, however, by will of a sum to the trustees of a settlement will be held to be a satisfaction of a DEBT, where testator has covenanted to pay such a sum on his death to the said trustees, and will not be chargeable with duty as a legacy.

Probate Duty and Estate Duty.

Covenant in a marriage settlement **to pay money on death** of covenantor. The amount covenanted to be paid (though it can be deducted against Probate Duty); not being for **full consideration in money or money's worth** (*Lord-Advocate* v. *Sidgwick*, 4 Sco. Sess. Cas. 4th Ser. 815) cannot be deducted against Estate Duty (s. 7 (1) of Finance Act, 1894). Where, however, the deceased is first tenant-for-life of the settled fund, duty is not also payable on the amount covenanted to be paid (as part of the settled fund), for otherwise Estate Duty would be levied more than once in respect of property passing on the same death (s. 7 (13)) [Estate Duty would, however, be payable on the death of the second tenant-for-life]. It was held in such a case that the duty should be borne by the residue, and not by the covenantees: for the covenant although a debt for all other purposes was not a debt within s. 7 as against Estate Duty, and the covenantees being creditors were not persons taking under the will within the meaning of s. 9 (*Re Gray*, (1896) 1 Ch. 620). Cf., however, *Re Higgins* (*supra*).

Annuity to B. secured only by personal covenant of A.

1. On B.'s death after Aug. 1, 1894, Estate Duty is not in practice claimed on the cesser thereof. Where, however, A. so dies, no deduction against his free estate is allowed in respect of the annuity to B.
2. Where the annuity to B. arises on the death of a third person (C.) no Estate Duty in practice claimed.

Covenant to leave by will and covenantor dies intestate.

1. If covenantee not entitled to a distributive share of the covenantor's personal estate under the Statute of Distributions, then the covenant to bequeath will be treated as a specialty debt against the covenantor's estate.
2. If the covenantee is so entitled, the question sometimes arises whether such distributive share is a performance of the covenant, or whether the covenantee can claim both the distributive share and the money due under the covenant.
   (*a*) When the covenantor's death occurs at or previous to the time when the obligation ought by the terms of the covenant to be performed, the distributive share will be taken as a *pro tanto* or *in toto* performance of the covenant (*Blandy* v. *Widmore*, 2 L. C. 391; *Goldsmid* v. *Goldsmid*, 1 Swanst. 211).
   (*b*) Where the death occurs after such obligation has arisen, the covenantee is entitled to both the distributive share and the money under the covenant (*Oliver* v. *Brickland* cited, 1 Ves. Sr.; 3 Atk. 420).

For example, A. covenanted on his marriage to pay to his trustees within two years £1000 for the absolute use of his wife, and died intestate after the two years had expired without having performed the covenant. More than £1000

COVENANT—*continued.*

devolved on the widow under the intestacy. The widow would also be entitled to the £1000 under the covenant, her distributive share being, in the circumstances, no satisfaction thereof.

A covenant by A. not to revoke his will, or to execute a power of appointment by will is a binding covenant, and an action will lie for the breach thereof, although it cannot be specifically enforced (*Robinson* v. *Ommanney*, 23 C. D. 285; *In re Parkin*, (1892) 3 Ch. 510). A voluntary covenant by A. to bequeath a certain sum to charity is in substance, a legacy, and the charity takes nothing should testator die leaving only real estate (*Jeffries* v. *Alexander*, 8 H. L. 594).

Covenant to settle after-acquired property of wife.

If in a covenant in a marriage settlement to settle **the after-acquired property of the wife** it is intended that property in which she has a reversionary interest at the date of the settlement, but which does not fall into possession until the coverture has determined, should be comprehended, the term covenant should expressly include property to which the wife is entitled at such date (*Agar* v. *George*, 24 W. R. 636).

The covenant to settle after-acquired property binds that property in equity, but not as against a purchaser for value without notice who acquires the legal estate.

These covenants, moreover (unless the words thereof are clear to the contrary), operate only during the coverture when the wife is the survivor; but beyond the coverture when the husband is the survivor (*Fisher* v. *Shirley*, 43 Ch. Div. 290; *Broughton* v. *Broughton*, 1894, 3 Ch. 76).

Property preserved from lapse by the operation of s. 33 of the Wills Act is not caught by the covenant (*Pearce* v. *Graham*, 11 W. R. 415).

If the covenant be merely to settle property to which the wife, or husband in her right, shall become entitled during the coverture, as the words "SHALL BECOME ENTITLED" import a change of condition, so the covenant will not include property in which she has at the date of the settlement a vested interest in possession, or in which she has a reversionary interest, which, however, does not fall into possession until after the determination of the coverture (*Re Mitchell's Trusts*, L. R. 9 Ch. D. 5).

Nor does it include property over which the wife acquires a general power of appointment (*Oliphant* v. *Gesard*, 58 L. T. 800). But such a covenant will include such reversionary property if the interest falls into possession during the coverture, for there is here a sufficient change of condition (*Archer* v. *Kelley*, 8 W. R. 684).

A covenant to settle the wife's after-acquired property, if made by the wife (*Butcher* v. *Butcher*, 14 Beav. 222), but not so if entered into by the husband alone (*Travers* v. *Travers*, 2 Beav. 179; see also *Dawes* v. *Treadwell*, 29 W. R. 793), will bind separate estate subsequently acquired, unless a restraint on alienation is annexed to the separate use, or it is excepted out of the covenant (*Coventry* v. *Coventry*, 32 Beav. 612; *Gibson* v. *Way*, 56 L. T. 80). In construing the covenant for the purpose of deciding whether property coming to the woman for her separate use under the Married Women's Property Act, 1882, falls within the covenant, the Court, owing to s. 19 of the Act, looks at the matter as if the Act had not been passed (*Re Stonor's Trusts*, 24 Ch. D. 195; *Christian* v. *Whitaker*, 34 Ch. D. 227; *Hancock* v. *Hancock*, 38 Ch. D. 78).

The general form of the covenant will, where the intention otherwise is not clearly

COVENANT—*continued.*

expressed, only bind property acquired during the husband's lifetime (*Dickinson* v. *Dillwyn*, 17 W. R. 1122; *Re Edwards*, 22 W. R. 144; *Re Campbells' Policies*, 25 W. R. 268), and is rendered inoperative by a judicial separation between the husband and wife (*Dawes* v. *Creyke*, 33 W. R. 869). In *Fisher* v. *Shirley* (43 Ch. D. 290; 38 W. R. 70), a covenant by the intended husband to settle all property which came to him in his marital right was held to include property which came to him through his wife, but after her death.

"It has been said that the effect of s. 19 (Married Women's Property Act, 1882) is said to preserve the rights of persons taking under a marriage settlement as if the Act had not passed. Thus, where a marriage settlement made in 1862 contained an agreement for the settlement of after-acquired property of the wife except interests settled to her separate use, it was held that a bequest made to her after the commencement of the Act without any limitation to separate use came within the agreement (*Re Stonor's Trusts*, 24 Ch. D. 195, followed in *Re Whitaker*, 34 Ch. D. 227). And so a covenant to settle by the husband alone, binds property which, but for s. 19, the wife would take for her separate use under the Act (*Hancock* v. *Hancock*, 38 Ch. D. 78, over-ruling *Re Queade's Trusts*, 33 W. R. 816). In all these cases the settlement and the marriage were before the Act and the wife's title accrued after the Act. In *Re Stonor's Trusts* and *Re Whitaker* the covenant was entered into by the wife as well as the husband. The decision in *Hancock* v. *Hancock* has now been extended to cases of settlements after the Act (*Stevens* v. *Trevor-Garrick*, (1893) 2 Ch. 307). If this extension is well founded it would appear advisable that for the future devises and bequests to married woman should be made expressly to their separate use. In *Re Queade's Trusts*, Chitty, J., pointed out some singular results which might follow upon a construction of s. 19 which gives to a covenant to settle by the husband alone the same effect which it would have had before the Act; and in the editor's opinion it cannot be safely assumed that the above decisions finally establish such a construction in respect of settlements made after the Act" (Davidson's "Concise Precedents," 1894, note, p. 778).

COWLEY CASE (1897), 2 Q. B. 47; 77 L. T. 668 (decision of Court of Appeal).

A. (Lord Mornington, *ob.*, 1863) limited by will certain real estate to B. for life (1st Earl Cowley: *ob.*, 1884), remainder to C. for life (2nd Earl Cowley: ob., 1895), remainder to C.'s first and other sons.

C. and the heir-in-tail (H.), after the death of B., barred the entail and resettled the property, H. receiving under the resettlement a life interest in succession to his father (C.).

H., in consideration of C.'s consenting to the resettlement, granted him an annuity of £3000 a year for life.

The resettlement reserved a joint power of appointment to C. and H., subject, however, to certain prior charges on the property created by A.'s will.

C. had raised loans to a large amount (£140,000), and had given in consideration annuities charged on his life estate.

C. and H., to discharge these annuities, mortgaged in 1888 and 1889 (in exercise of their joint power) both C.'s life estate and the fee simple in remainder for £230,000, of which sum £200,000 went to C., the remainder to H. (the mortgagees paying off the £140,000, and the mortgage on C.'s life estate being transferred to them).

It was previously agreed that the mortgage so transferred should be kept on foot as

COWLEY CASE—*continued.*

a subsisting charge on C.'s life estate for the benefit of the mortgagees, and by way of additional security for the said sum of £230,000. Under a resettlement then made H. took an annuity of £3000 charged upon the property during the life of C.

In a claim by the Crown for Estate Duty on the principal value of the estate, the petitioner claimed, *inter alia*—

That he was entitled to a deduction in respect of such part of the mortgages raised as had been taken by C.

In the alternative, a deduction in respect of the whole of the mortgages.

A deduction of £65,200 representing the capitalized value of the annuity of £3000 charged on the estate during the life of C.

It was held by the Court of Queen's Bench (Pollock, B., Bruce, J.) that a deduction could be taken in respect of the whole of the mortgage debts, including the part thereof taken by C.

The Court of Appeal (A. L. Smith, Rigby, and Collins, L.JJ.), however, held that no deduction should be allowed either in respect of the mortgage debt, or in respect of the annuity.

"What is to pay Estate Duty is the value of the interest which passes, or is deemed to pass on the death, not the extent to which it may have been enjoyed by the deceased." . . .

"The Finance Act makes liable to Estate Duty the value of the estate which passes, and not the value it may be to any individual successor" (*per* Smith, L.J.).

"The life interest of C. and the mortgage debt, as a charge thereon, came to an end at one and the same time" (*per* Collins, L.J.).

An appeal to the House of Lords is now pending.

CREDIT.

The Commissioners of Inland Revenue are empowered to give credit for Stamp Duty in certain cases (55 Geo. 3, ss. 45–49); but in practice they are very rarely asked to do so.

CREDITOR.

1. May attest will, notwithstanding the property disposed of is charged with his debt (s. 16, Wills Act).
2. Is not called upon to elect between his claim *quâ* creditor upon the estate of A. (intestate) and a legacy bequeathed by B., to whom A.'s property passes, for election only applies to cases of bounty (*Kidney* v. *Coussmaker*, 12 Ves. 136).
3. Legacy to, where of equal or greater amount, is, *primâ facie*, held to be a satisfaction of the debt; but the rule is excluded by slight indications of intention to the contrary. See "Satisfaction."
4. Grant of administration to—

   A creditor of a deceased person has no right to a grant of administration except by the practice of the Court, and it is only granted where the widow and the next-of-kin and all persons entitled to share with them in distribution renounce. The ground for the grant is that the creditor's debt cannot be paid until representation is taken. See also "Debts."

CROPS.

Growing crops are personal estate, and generally speaking pass to the executor, or administrator of a tenant-for-life or other limited owner, or of the owner in fee where he dies intestate as to the property; yet, unless a testator shows

CROPS—*continued.*

a contrary intention, they pass under a devise of the land (*Vaisey* v. *Reynolds*, 5 Russ. 12), and so escape duty.

A tenant for life whose estate determines by death, and not by his own act, etc., and where the crops have been sown by him, is entitled to emblements, see "Emblements."

CROSS REMAINDERS.

In settlements of land, where the land is limited to two or more persons as tenants in tail, "cross remainders" of their respective shares are frequently limited. For example, in strict settlements, the limitation to the daughters generally runs as follows:—

"To the use of the daughters and the heirs of their respective bodies in equal shares as tenants in common. And if and so often as there shall be a failure of issue of such daughters then as well as to her original share as also to the share or shares which shall have accrued to her or the heirs of her body by this present limitation, to the use of the others of such daughters and the heirs of their respective bodies in equal shares as tenants in common. And if there shall be a failure of issue of all such daughters but one, or if there shall be but one such daughter, then as to the entirety of the premises to the such one or only daughter and the heirs of her body."

The effect of such a limitation is, that on the death of any daughter, and the failure of the issue of her body, both her original share and any share which she or her issue may have taken will be divided equally among the other daughters in tail.

In a **deed** cross remainders can be given only by express limitation, and can never be implied; but in **wills** they may be raised not only by actual limitation, but also by implication.

In gifts by will where the gift is to several for life and then to their issue, with cross remainders between them, the class of issue to take under the cross remainders is fixed, once for all, at the death of the parent, who is tenant-for-life, and not at the death of the tenant-for-life dying without issue (*In re Ridge's Trusts*, 7 Ch. 665). Theobald on Wills, 4th ed. 270.

CROWN.

Where A. has died intestate without heirs or next-of-kin, then subject to the rights of the intestate's widow, the Crown takes—

1. The deceased's heritable freeholds as lord paramount in case there is no mesne lord—the existence of a mesne lord is always presumed until the contrary is shown.
2. The deceased's personalty absolutely as *bona vacantia*. Property so escheating to the Crown is, in practice, charged with Probate Duty or Estate Duty.

CROWN DEBTS.

A Crown debtor is not within the Debtor's Act, 1869 (*Re Smith*, 2 Ex. D. 47; *Attorney-General* v. *Edmunds*, 22 L. T., N. S. 667).

Crown debts have priority in administration of assets. See "Bankruptcy."

Legacy Duty.

". . . and in every such case such duty (Legacy Duty) shall be a debt to His Majesty, his heirs and successors, both of the person or persons who shall make

CROWN DEBTS—*continued.*

such delivery, payment, satisfaction or discharge, and of the person or persons to whom the same shall be made" (36 Geo. 3, c. 52, s. 6).

Succession Duty.

". . . and in the event of the nonpayment of such duty (Succession Duty) as aforesaid every person hereby made accountable shall be a debtor to Her Majesty to the amount of the unpaid duty for which he shall be so accountable" (16 & 17 Vict. c. 51, s. 44).

Estate Duty.

Also a Crown debt; for by s. 8 (1) of the Finance Act, 1894, "the existing law and practice relating to any of the duties now leviable on or with reference to death shall, subject to the provisions of this Act, and so far as the same are applicable, apply for the purposes of the collection, recovery, and repayment of Estate Duty."

CROWN ENTAILS.

Where any lands or chattels are so settled, whether by Act of Parliament or Royal Grant, that no one of the persons successively in possession thereof is capable of alienating the same, whether his interest is in law a tenancy for life or a tenancy in tail, the provisions of this Act with respect to settled property shall not apply, and the property passing on the death of any person in possession of the lands and chattels shall be the interest of his successor in the lands and chattels, and such interest shall be valued, for the purpose of Estate Duty, in like manner as for the purpose of Succession Duty (Finance Act, 1894, s. 5 (5)).

And where lands or chattels are so settled by Act of Parliament or Royal Grant that no one of the persons successively entitled can alienate the same, the Settlement Estate Duty is not payable.

CUM ONERE. See "Ancestral Mortgage."

CUMULATIVE DUTIES.

1. *Legacy* (and Stamp) *Duty* is payable upon each devolution of a legacy or share of residue.

(*a*) A testator bequeathed a sum of money in trust for his wife A. for life, remainder to his daughter B. and her husband C. for their joint lives and the life of the survivor (C. survived), and after the death of the survivor as B. should appoint (did not appoint), and in default of appointment to B.'s executors or administrators.

C., who died without taking out administration to B.'s estate, bequeathed all his property to his daughter D.

The fund passing from B. to C. was liable to Administration Duty though exempt from Legacy Duty (C. being husband of B.).

A second grant to the same fund (as forming part of C.'s estate) was also necessary, and here Legacy Duty (cf. s. 41 of 44 Vict. c. 12) was payable as well as Stamp Duty (*Attorney-General* v. *Malkin*, 2 Phil. 64).

(*b*) X. died in 1840, intestate, leaving a son A., and two daughters, B. and C., as his next-of-kin, and his wife W. who was barred by settlement.

A. died a minor and intestate; his next-of-kin being W. (mother), B. and C. (sisters). B. then died, a minor and intestate, her next-of-kin being W. (mother) and C. (sister). C. then died, a minor and intestate, her sole next-of-kin being her mother W. (the mother of A., B., C.). W.

CUMULATIVE DUTIES—*continued.*

died without having taken out grants to the estates of A., B., and C., and left the whole fund by will, appointing the defendant as her executor.

Held, that the defendant (W.'s executor) could only make title to the fund by taking out administration to X., A., B., and C., and that he was liable to pay (Legacy and Stamp) Duty on the DEVOLUTION—

1. Of the entire fund from X. to A., B., and C.
2. Of A.'s share thereof to W., B., and C.
3. Of B.'s share thereof to W. and C.
4. Of C.'s share thereof to W.
5. Of the entire fund as passing under W.'s will (*Attorney-General* v. *Maxwell* (Ireland), 5 Ir. Jur. (N.S.) 150, 10 Ir. C. L. R. 262).

(*c*) A. by will bequeathed £10,000 upon trust to B. (wife of C.) for life, remainder to B.'s children who should attain twenty-one. Seven attained twenty-one, of whom D. and E. predeceased B. and C., dying intestate. C. became entitled to their shares (one-seventh each) as their sole next-of-kin.

Held, that Stamp and Legacy Duty was payable in respect of the two-sevenths shares passing from D. and E. to C., in addition to similar duties payable thereon as passing under C.'s will (*Attorney-General* v. *Cleave*, 31 L. T. (N.S.) 86). See also *Lord-Advocate* v. *Pringle*, 5 Sco. Sess. Ca., 4th Ser. 912.

2. *Succession Duty.*

In the case where a successor dies before the subject of the succession falls into possession and disposes of his reversionary interest by will or dies intestate, LEGACY and SUCCESSION Duty are not both payable in respect thereof, but **one duty only, and that at the highest rate.**

A. bequeathed a fund, to which he was absolutely entitled on the death of his sister B. without issue (which happened), to C. (husband of B.) for life, remainder as B. should by will appoint. B. appointed by will.

A. died in 1854, B. in 1864; C. survived B. three days.

The Crown claimed Succession Duty at the rate of three per cent. in respect of B.'s succession acquired by the exercise of the power (s. 4);

And also Legacy Duty at the rate of ten per cent. in respect of the fund appointed, under s. 7 of 36 Geo. 3, c. 52.

Held that ONE duty only (viz., that at ten per cent.) was payable (*In re Chapman's Trusts*, 2 Hem. & Mill. 447).

The principle of this decision was subsequently affirmed in the case of *Attorney-General* v. *Littledale* (*post*).

Cf. *Attorney-General* v. *Malkin*; *Attorney-General* v. *Maxwell*, and *Attorney-General* v. *Cleave* (*supra*).

C. (*ob.* 1832) bequeathed, *inter alia*, to her brothers and sisters and a nephew, her reversionary interest in a settled fund expectant on the death of her son-in-law, the tenant-for-life, B. (*ob.* 1868), to which she was entitled as the sole next-of-kin of her daughter A. (*ob.* 1831).

The Crown claimed Succession Duty at the rate of one per cent. from C.'s executors as owners by derivative title of C.'s reversionary property within the terms of s. 15 and also Legacy Duty at the rate of three per cent. under C.'s will.

Held that Legacy Duty at three per cent. under C.'s will, having been paid on the settled property, there was not also a claim for Succession Duty under

CUMULATIVE DUTIES—*continued.*

the settlement (*Attorney-General* v. *Littledale*, L. R. 5 Eng. and Ir. H. L. App. 290).

3. *Estate Duty* (Finance Act, 1894).

S. 7 (10) enacts that—

"Property passing on any death shall not be aggregated more than once, nor shall Estate Duty in respect thereof be more than once levied on the same death."

Example.

A., tenant for life of a settled fund, dies after Aug. 1, 1894, and the fund passes in the hands of the trustees to B., the second tenant-for-life, on whose death the fund will fall into A.'s estate. Estate Duty is payable on the settled fund on A.'s death, but not again on the value of the interest in expectancy as part of A.'s estate, nor is such value aggregable with the rest of A.'s estate, so as to affect the rate of duty thereon; but such value may be added so as to make the estate exceed £1000, when Legacy, Succession, and Settlement Estate Duty would be potentially payable (s. 16 (3)).

"The paramount object of (s. 21 (1) of Finance Act, 1894) appears to me to be that settled property should not pay the two duties, namely, first Probate Duty and then Estate Duty" (per A. L. Smith, L.J.). See "**Dodington Case.**"

CUMULATIVE LEGACIES.

Where a testator has twice bequeathed a legacy to the same person (A.) it is often a question of construction whether A. is entitled to only one or both of the legacies.

Where the intention of the testator appears on the face of the instrument such intention prevails, otherwise the following rules would appear to apply:—

(*a*) Where a specific thing is twice bequeathed, the legatee is entitled to only one legacy, and this, whether the bequest was by the same instrument or not (*Suisse* v. *Lowther*, 2 Hare, 424, 432).

(*b*) Where the bequest is not of a specific thing, but of quantity (*e.g.* a sum of money).

1. If bequeathed by the same instrument; then if of EQUAL amount, the legatee takes one only (*Holford* v. *Wood*, 4 Ves. 75); if of UNEQUAL amount the legatee takes both (*Yockney* v. *Hansard*, 3 Ha. 622).
2. If bequeathed by different instruments (*e.g.* will and codicil) the legatee, *primâ facie*, takes both, whether equal or unequal (*Hooley* v. *Hatton*, 1 B. C. C. 390, n.; *Lee* v. *Pain*, 4 Ha. 201, 216); otherwise, where *same motive* expressed, and *same sum* given (*Benyon* v. *Benyon*, 17 Ves. 34; Cf. *Wilson* v. *O'Leary*, 12 Eq. 522).

Testator may, however, show an intention that the gift by the later instrument is to be substitutional. For example—(*a*) where the later instrument is not a codicil, but is described as a last will and testament (*Jackson* v. *Jackson*, 2 Cox. 35); or (*b*) where it recites that the testator has not time to alter his will (*Russell* v. *Dickson*, 4 H. L. 293); or (*c*) where it is a mere repetition of the prior instrument (*Coote* v. *Boyd*, 2 Bro. C. C. 521); or (*d*) where it appears that the later instrument was made for the purpose of explaining, or better ascertaining, the legacies bequeathed by the former (*Allen* v. *Callow*, 3 Ves. 289; *Barclay* v. *Wainwright*, 3 Ves. 462).

CUMULATIVE LEGACIES—*continued.*

Where a pecuniary gift and a residue is given to the same person the legatee takes both (*Kirkpatrick* v. *Bedford*, 4 App. C. 96).

CURATOR, Liability of.

For payment of Succession Duty (s. 44 of 16 & 17 Vict. c. 51), and Estate Duty, Finance Act, 1894, ss. 8 (4), 23 (13).

CURTESY.

An estate by the curtesy of England is that interest which a husband has for his life in his wife's fee simple or fee tail estates, general or special, after her death.

Requisites for curtesy:—

1. A legal marriage not avoided by a divorce.
2. Seizin of the wife (solely or as co-parcener, or tenant in common).
   (*a*) As to corporeal hereditaments it must be a seizin in deed.
   (*b*) As to incorporeal hereditaments (advowsons, tithes, rents, etc.), a seizin in law is sufficient, if a seizin in deed is impossible.
3. Issue born alive during the mother's existence (*Paine's Case*, 8 Co. 34) and capable of inheriting her estate. For example, where lands are limited to A. (a woman) and the heirs **male** of her body, and she marries and has issue a daughter only, her husband cannot take as tenant by the curtesy. Immaterial whether the issue born before or after seizin of wife, or whether such issue live or die.

   If a woman inheritable marries twice, and has issue by each husband, and dies, the second husband will be tenant by the curtesy, though the issue by the first wife be living.
4. Wife must have been in possession. A person cannot be tenant by the curtesy of a remainder or reversion expectant upon an estate of freehold, unless the particular estate be determined during the coverture, except, perhaps, in the case of a lease for life whereon rent is reserved. There is curtesy (and also dower), however, of a reversion expectant on a term of years, because the wife is seized of the immediate freehold (Co. Litt. 29d).
5. Death of wife in husband's lifetime. The husband's title is initiated at the birth of issue and consummated at the death of his wife.

The estate of the husband is not complete until the death of the wife. However, he may convey the land for the term of his own life from the moment of the child's birth. Before this he could only convey for the joint lives of himself and his wife.

The husband's curtesy interest in the wife's real estate is not affected by the Married Women's Property Act, 1882, but with reference to property coming to a married woman under this Act (*Hope* v. *Hope*, (1892) 2 Ch. 336), or settled on her for her separate use (*Cooper* v. *Macdonald*, 7 Ch. D. (C. A.) 288), curtesy only attaches where she dies intestate.

Curtesy extends to EQUITABLE as well as legal estates. For example, where A., who died in 1875, by his will made in 1872, devised freeholds upon trust to his daughter D. for her separate use, and D. died in 1874 leaving her husband (H.) and a child surviving, it was held that H. was tenant by the curtesy (*Eager* v. *Furnivall*, 17 Ch. D. 115).

In GAVELKIND lands curtesy extends to a MOIETY only of the lands, and ceases if the husband remarries; the husband, however, need not have had issue by the wife.

CURTESY—*continued.*

A man may be tenant by the curtesy of money agreed or directed to be laid out in the purchase of land (*Sweetapple* v. *Bindon*, 2 Vern. 536).

Curtesy is not incident to an estate *pur autre vie* (*Stead* v. *Platt*, 18 Beav. 50).

In COPYHOLDS curtesy only exists by special custom. Where it obtains it is considered as a continuation of the wife's estate, and is, therefore, complete without admittance. The special custom is extinguished, however, where the copyholds are enfranchised, and the land is then subject to the general law of curtesy.

Advowsons, and some inferior rights of ownership, as commons, rents, and tithe rent charge may be subjects of the estate by the curtesy.

Succession Duty.

Where a testator (T.) devises fee simple lands to his child (C.) in fee, who predeceases T. leaving issue to survive T., the husband (H.) of C. is to be charged with the Succession Duty which would have been chargeable on the devise to C. if she had in fact survived T., because under s. 33 of the Wills Act the devise does not lapse but "shall take effect as if her death had happened immediately after the death of the testator" (see "Lapse"). If C.'s death had in fact happened immediately after the death of T. the duty would have attached on the property devised to C. although she in fact never enjoyed it, and H. would have been liable for that duty. The life of H. will be taken as the measure of the duration because he is the owner for his own life of C.'s interest, and is liable under s. 44 of 16 & 17 Vict. c. 51, to the extent only of the property received by him. This rule of practice, which rests on the doctrine of *Eager* v. *Furnivall* (*supra*), does not extend beyond this particular case of curtesy; for example, if T. had also devised freeholds to his son S., who predeceased, leaving issue, to survive testator, and S. devised said freeholds to his wife (W.), W. would take not as derived from T., but as derived from S., and so be exempt (s. 18) from duty.

Estate Duty and Settlement Estate Duty.

1. "This part of this Act shall apply to property in which the wife or husband of the deceased takes an estate in dower or by the curtesy or any other like estate, in like manner as it applies to property settled by the will of the deceased" (Finance Act, 1894, s. 22 (3); and see s. 23 (19) as to Scotland).

   Estate Duty, therefore, is leviable, but not Settlement Estate Duty (s. 5 (1 *a*)).
2. Property held by curtesy [or in dower] is in practice treated as not "settled" within the meaning of ss. 16 (3); 22 (1) (*h*, *i*).

CUSTOMS, ANNUITY, AND BENEVOLENT FUND.

A policy in the Customs Benevolent Fund is a policy of assurance within s. 17, and an assignment of such a policy to a nominee for a pecuniary consideration does not create a succession (*In re Maclean's Trusts*, L. R. 19 Eq. 274).

A bequest, however, of such a policy, though not liable to Legacy Duty (*Attorney-General* v. *Rowsell*, 36 Ch. D. 67, n.) is liable to Succession Duty (*Attorney-General* v. *Abdy*, 1 H. & C. 266).

Not liable to Probate Duty, but chargeable with Account Duty (52 Vict. c. 7, s. 11 (1)) and Estate Duty (Finance Act, 1894, s. 2 (1 *c*)). See "Policy."

CUSTOMS AND INLAND REVENUE ACTS, 1880, 1881, 1888, 1889. See Appendix.

CY PRÈS, Doctrine of.

Where a testator has two objects, one primary or general, and the other secondary or particular, which are incompatible, the particular must be sacrificed to give effect to the general object, or *cy près*, that is as near as may be to the testator's intentions according to law (Wharton's "Law Lexicon"). For example, a devise to an unborn person for life, remainder to his children successively in tail, being void as within the rule against perpetuities, may be carried out by the Court by giving the unborn person an estate tail.

This doctrine is also applied to charitable bequests, see "Charities, Gifts to."

The doctrine will, however, not be applied—

(*a*) where the estates are limited to children of unborn persons in fee (*Bristow* v. *Warde*, 2 Ves. Jun. 336);

nor (*b*) where the result would be to carry the estate to persons whom the testator did not intend to benefit (*Monypenny* v. *Dering*, 16 M. & W. 418).

D.

DATES.

April 5, 1805.—Personalty derived from persons dying on or before this date not liable to Legacy Duty so far as regards ancestors or descendants; but these latter are liable to Succession Duty if the death upon which they become entitled takes place after May 19, 1853 (*Attorney-General* v. *Fitzjohn*, 2 Hurlst. & Norm. 465).

May 19, 1853 (16 & 17 Vict. c. 51).—There must be a death on or after this date for Succession Duty to be payable.

April 3, 1860 (23 & 24 Vict. c. 15).—The exercise of an absolute power over personalty within the jurisdiction of the Court, by a testator dying after this date, renders the same liable to Probate and Inventory Duty (s. 4), such duties to be a charge upon the property appointed (s. 5).

July 31, 1868 (31 & 32 Vict. c. 124).—Interest at the rate of £4 per cent. per annum [now £3 per cent., see "Arrears"], payable in respect of Legacy and Succession Duty in arrear, the acceptance of which by the Commissioners to be an absolute waiver of penalties (s. 9).

September 1, 1868 (31 & 32 Vict. c. 124).—From and after this date a deduction, as against Probate and Administration Duty, can be taken from the value of leaseholds of the amount of the mortgage debts for which they are the sole security (s. 7).

March 24, 1880 (43 Vict. c. 14).—Exemption from Legacy Duty where deceased dies after this date and **gross** estate does not amount to £100 (s. 13). Relief extended in practice to cases where the **net** estate is under £100.

April 1, 1880 (43 Vict. c. 14).—Probate and Administration Duties assimilated (s. 9).

June 1, 1881 (44 Vict. c. 12).—Imposition of new scale of Stamp Duties on affidavits delivered and inventories exhibited and recorded on or after this date (s. 27). Power to deduct debts and funeral expenses (s. 28).

Where deceased died on or after this date a fixed duty of 30*s.* may be paid where the GROSS value of the whole personal estate and effects (English and foreign) does not exceed £300 (s. 33).

Relief from Legacy and Succession Duty in respect of property on which such fixed duty paid (s. 36).

DATES—*continued.*

Account Stamp Duty imposed in respect of certain voluntary gifts and settlements made by a person dying on or after this date (s. 38).

Relief from 1 per cent. Legacy and Succession Duty, where grant taken out on or after this date in respect of property on which Stamp Duty has been paid (s. 41).

Pecuniary legacies under £20 made liable to duty where testator dies after this date (s. 42).

JULY 1, 1888 (51 Vict. c. 8).—Charge of additional duties (½ per cent. for lineals; 1½ per cent. for collaterals and strangers) on successions arising on or after this date; but leaseholds, and property having paid Account Stamp Duty, exempted therefrom (s. 21, sub-s. 1). Legacies and moneys payable out of or arising from sale of real estate, taxable at the higher rates, as successions to personalty, and the Legacy Duty imposed thereon by 45 Geo. 3, c. 28, ss. 4 and 5, abolished s. 21, sub-s. 2, where person charging dies after this date.

Optional method of payment of Succession Duty in respect of successions arising on or after this date—by eight equal half-yearly instalments as heretofore, or by four yearly instalments in respect of a moiety, the remaining moiety to be paid on the day for payment of the last instalment of the first moiety; or, if not so paid, by four equal yearly instalments, with interest at 4 per cent. per annum (s. 22).

JUNE 1, 1889 (52 Vict. c. 7).—Temporary Estate Duty at the rate of 1 per cent. on personal property, where

(*a*) The value of the estate and effects in affidavit delivered or inventory exhibited and recorded on or after this date exceeds £10,000 (s. 5 (1));

(*b*) The value of the personal or moveable property included in an account delivered after this date exceeds £10,000 (s. 5 (2)).

Temporary Estate Duty at the same rate on successions by a death on or after this date, where

(*a*) The value of the succession exceeds £10,000; or,

(*b*) The value of the succession to real property under the will or intestacy of the deceased added to the value of any other benefit taken by the successor under such will or intestacy exceeds £10,000 (s. 6).

Allowance under s. 38 of 16 & 17 Vict. c. 51, in respect of successions arising by a death on or after this date restricted to property which the successor may have acquired by any title not conferring a succession on him and which passes from the successor to some other person (s. 10 (1)).

Abolition of the exemption of successions of less value than £20 in respect of successions arising on or after this date (s. 10 (2)).

Account Stamp Duty to extend to money received under a policy of assurance effected by any person dying on or after this date on his life, where the policy is wholly (or partially) kept up by him for the benefit of a donee (nominee or assignee) (s. 11 (1)).

No return of Stamp Duty under sub-s. 3 of s. 38 of 44 Vict. c. 12, to be made in respect of any account delivered after this date (s. 11 (2)).

SEPTEMBER 1, 1890 (53 & 54 Vict. c. 29).—The widow of an INTESTATE, dying after this date without issue, to receive £500, and also her statutory distributive share of the remainder. The £500 to be rateably apportioned between the real estate (value taken at twenty years' purchase on the net rental) and the personal estate.

JUNE 1, 1896.—Cesser of the TEMPORARY ESTATE DUTY (52 Vict. c. 7, s. 7).

DATES—*continued.*

AUGUST 5, 1891.—The provisions of the Mortmain and Charitable Uses Act of 1891 apply to wills of testators dying after this date.

AUGUST 2, 1894.—Estate Duty chargeable on property (real or personal, free or settled, English or foreign—with certain limitations) passing on a death on or after this date (Finance Act, 1894, s. 1).

JULY 1, 1896.—Date of operation of Finance Act, 1896, as to deaths on or after this date.

JANUARY 1, 1898.—Date of operation of Land Transfer Act, 1897, as to deaths on or after this date.

JULY 1, 1898.—Date of operation of Finance Act, 1898, as to deaths on or after this date.

DAUGHTER.

Chargeable to Legacy Duty at the rate of 1 per cent. (55 Geo. 3, c. 184, sch., Part III.); but see s. 41 of 44 Vict. c. 12, and Finance Act, 1894, s. 1.

Chargeable to Succession Duty at the rate of 1 per cent. (s. 10 of 16 & 17 Vict. c. 51), and of 1½ per cent. (s. 21 of 51 Vict. c. 8); but see s. 41 of 44 Vict. c. 12, proviso to s. 21 of 51 Vict. c. 8, and Finance Act, 1894, s. 1. See "Exemptions." See also "Children, Gifts to."

DAUGHTER-IN-LAW

Is chargeable to the same rate of duty as her husband (son of deceased); but see "Rates of Duty."

DEATH.

1. A claim for **Succession Duty** can only arise upon a death on or after May 19, 1853, and for **Estate Duty** upon a death on or after Aug. 2, 1894. See "Dates."

2. Where the death of a person cannot be proved, the Court of Probate, if satisfied that from the evidence submitted there is a reasonable presumption of death, will grant probate or administration, and will give permission to the executor or administrator to swear that the testator or intestate died at or after the date last given of his existence. Where a man has not been heard of for some time it is generally necessary that advertisements asking for information respecting him should be inserted in three newspapers.

3. When a person has not been heard of for seven years by those (if any) who, if he had been alive, would naturally have heard of him, he is presumed to be dead, unless the circumstances of the case are such as to account for his not being heard of without assuming his death. There is no presumption, however, as to the time when he died. Where such death is presumed the next-of-kin must be cited by the person who wishes to prove the will.

The onus of proving that a legatee, who has not been heard of for seven years, survived the testator lies on those claiming under him (*Re Benham's Trusts*, L. R. 4 Eq. 416).

There is no presumption as to the order in which two or more persons (for example, A. and B., husband and wife, or joint tenants) died who are shown to have died in the same accident, shipwreck, or battle. For example, where A. has appointed his wife, B., executrix and residuary legatee, and both are drowned at sea in the same ship.

If A. survived, the gift of residue would lapse, and administration would have to be taken out to A.; if B. (the wife) survived, administration would have to be

DEATH—*continued.*

taken out to her estate as well as administration with the will annexed to the husband.

In this case the question of survivorship is one of fact, and the *onus probandi* lies on the person claiming derivatively from the wife as residuary legatee.

A husband and wife perished from the same calamity. Administration was granted to the next-of-kin of the husband (*Ewart*, 1 Sw. & Tr. 258).

A husband perished with his wife and child at Cawnpore. Administration was granted to the next-of-kin of the husband (*Wainwright*, 1 Sw. & Tr. 257). See also *Underwood* v. *Wing*, 24 L. J. 293; see further, *Tristram and Coote's* "Probate Practice," 12th ed.

4. **Interest ceasing on,** liability of to Estate Duty and Succession Duty, see "Cesser."
5. **Enlargement of interest by,** see "Enlargement of Interest."
6. By s. 24 of the Wills Act, a will takes effect as if it had been executed immediately before the death of the testator, unless a contrary intention appears by the will.

   It is, however, purely a question of construction whether the language is limited to property belonging to the testator at the date of his will or not, for the section does not enact that "we are to construe whatever a man says in his will as if it were made on the day of his death," per Lindley, L.J., *In re Portal and Lamb*, 30 Ch. D. 55.
7. In the case of a devise of an estate tail by A. to B., who predeceases A. leaving issue inheritable under the entail to survive A.; and in the case of a bequest or devise to C. (child or other issue), who predeceases A. leaving issue to survive A., the devise or bequest takes effect **as if B.'s or C.'s death had happened immediately after the death of A.**, apart from any contrary intention expressed by the will. See "Lapse."
8. **Death without issue.** See "Issue."
9. **Gifts over on death.** See "Gifts over."

DEATH DUTIES.

1. **Fiscal results of,** see "Statistics."
2. **History of,** see "History of the Death Duties."
3. **Definition of,** in s. 13 of Finance Act, 1894.

   In this section the expression "death duties" means the Estate Duty under this Act, the duties mentioned in the first schedule to this Act and the Legacy and Succession Duties, and the duty payable on any representation or inventory under any Act in force before the Customs and Inland Revenue Act, 1881, s. 13 (3).
4. **General Incidence of—**

   (*a*) *The Estate Duty* (Finance Acts, 1894, 1896).

   The Estate Duty is chargeable, speaking generally and with certain express exemptions, upon the principal value of all property, free or settled, real or personal, English or foreign (with certain limitations) which passes or is deemed to pass (and this will include *mortis causâ* gifts and gifts *inter vivos*, without reservation to the donor not *bonâ fide* made twelve months before the death), on the death of a person dying on or after Aug. 2, 1894.

   Estate Duty, however, in respect of such property shall not "be more than once levied on the same death" (s. 7 (10), Finance Act, 1894).

DEATH DUTIES—*continued.*

(*b*) *Settlement Estate Duty.*

S. 5 (1) of the principal Act enacts that—

Where property in respect of which Estate Duty is leviable, is settled by the will of the deceased, or having been settled by some other disposition passes under that disposition on the death of the deceased to some person not competent to dispose of the property—

(*a*) **A further Estate Duty called (Settlement Estate Duty)** on the principal value of the settled property shall be levied at the rate herein-after specified, except where the only life interest in the property after the death of the deceased is that of a wife or husband of the deceased, but

(*b*) During the continuance of the settlement the Settlement Estate Duty shall not be payable more than once.

(*c*) *Probate Duty*

Is an *ad valorem* Stamp Duty, only payable where the deceased died before Aug. 2, 1894, on the grant of probate or administration by virtue of which the personal property of the deceased in this country is realized and collected.

Its incidence depends upon the local situation of such property, the duty not being payable upon any assets of the deceased which are beyond the jurisdiction of the Court of Probate at the time when the right to the duty attaches (*Attorney-General* v. *Hope*, 1 Cr. Mee. & Rosc. 530).

The amount of the duty depends upon the value of the property, with accretions (*Partington* v. *Attorney-General*, L. R. 4 Eng. & Ir. H. L. App. 100) at the date of the grant, and is payable by means of stamps and not in money.

(*d*) *Legacy Duty*

Is a tax upon moveable property, and differs (*inter alia*) from the Probate Duty in that it is a tax upon distribution, while the latter is a tax upon collection. It is confined to gifts made by will, shares, or residues of the personal estates of intestates, and donations *mortis causâ*, and to property, either of a purely personal description, or which is so disposed of as to devolve to the beneficiaries in that character.

Its incidence depends upon the domicile of the deceased.

Its amount depends upon the value of the bequest, and upon the degree of consanguinity existing between the legatee and the deceased, and is payable in money upon receipt or retainer by or for the use of the legatee.

(*e*) *Succession Duty.*

The Succession Duty Act (16 & 17 Vict. c. 51) practically supplemented the Legacy Duty Acts, and made liable to the duty all successions (not already liable to Legacy Duty) to both real and personal property, and whether passing under settlement or will or by descent, intestacy, or survivorship.

Its amount depends upon the value of the succession, and upon the degree of consanguinity existing between the successor and the predecessor, and is payable in money, in the case of personal property upon receipt or retainer by or for the use of the successor, and in the case of "real property" by instalments, the first becoming due twelve

DEATH DUTIES—*continued.*

months after the successor has become entitled in possession. Where duty is payable on the **principal value**, see "Payment."

It incidence depends—

(*a*) As to successions to moveable property, upon the domicile (*q.v.*) of the owner, or the situation of the property according to circumstances.

(*b*) As to successions to immoveable property, upon the local situation thereof.

(*f*) *Account Stamp Duty.*

This tax was created by s. 38 of 44 Vict. c. 12, and extended by 52 Vict. c. 7, s. 11 (1), and is a Stamp Duty imposed (with a view to prevent evasion of Probate Duty, to which it is analogous) in respect of certain voluntary gifts and settlements of personal property (including leaseholds) made by any person dying after June 1, 1881.

See further, "Estate Duty," "Settlement Estate Duty," "Probate Duty," "Legacy Duty," "Succession Duty," "Account Stamp Duty," "Temporary Estate Duty."

DEBENTURES, AND DEBENTURE STOCK.

Companies, entitled to borrow, may raise loans by the issue of debentures. These debentures, in ordinary practice, are charges upon the property of the company. When charged upon a specific portion the debentures are legal mortgages thereof, and the holders are in the position of legal mortgagees. When charged on the profits generally, they constitute a "floating" charge, and the only remedy of the holders is to appoint a receiver.

Certain companies may also raise money on debenture stock, but the holders, although entitled to their full interest in priority to the shareholders, are not entitled to the repayment of their capital, nor to share in the government of the company.

Mortgage debentures and debenture stock of railway companies are not within the Mortmain Act (*Walker* v. *Milne*, 11 B. 507), neither is Leeds Corporation Debenture Stock (*Re Pickard* (1894), 2 Ch. 88); but Manchester Corporation Debenture Stock is within the Act (*Re Holmes*, 63 L. T. 477).

DE BONIS GRANTS. See "Freemark."

DEBTS.

1. Estate Duty.

(*a*) *Debts due to testator.*

It is not necessary that the debt should be within the jurisdiction of the Court to be liable to Estate Duty, which is leviable upon all property, free or settled, realty or personalty, including foreign personalty (within certain limits) passing on a death on or after Aug. 2, 1894, Finance Act, 1894, ss. 1, 2 (2).

(*b*) *Debts due from testator.*

Debts and incumbrances can be deducted against Estate Duty; but not where created by a disposition made by the deceased, unless they were incurred or created *bonâ fide* for full consideration in money or money's worth wholly for deceased's own use and benefit, and take effect out of his interest. Therefore voluntary debts, or sums covenanted to be paid in consideration of marriage, a jointure rent charge in favour of deceased's widow, and portions charged in favour

DEBTS—*continued.*

of his younger children taking effect on deceased's death in exercise by him of a special power conferred by some other instrument, cannot be deducted. Neither can a deduction be taken of any debt in respect whereof there is a right to reimbursement from any other estate or person, unless such reimbursement cannot be obtained (Finance Act, 1894, s. 7). The debt or incumbrance, when allowed, must be deducted from the subject of property liable thereto.

2. Probate Duty.

(*a*) *Debts due to testator.*

In order that an asset may be liable to Probate Duty it must be locally situate within the limits of the jurisdiction of the Court by which the grant of probate, or letters of administration, is to be made, or, at least, should be capable of being dealt with and disposed of by some act done there. See *Blackwood* v. *Reg.* (8 App. Cas. 82); *Commissioners of Stamps* v. *Hope* (1891) (A. C. 476). Therefore debts due from foreigners, whether by specialty or simple contract, are not liable to Probate Duty. It is otherwise with foreign bonds passing by delivery in this country.

Specialty debts due from residents in the United Kingdom are locally situate where the debtor resides (25 & 26 Vict. c. 22, s. 39). This rule applies also to mortgage debts, the locality of which in no way depends upon the situation of the property comprised in the mortgage.

A mortgage debt belonging to the deceased and remaining charged upon his own real estate is liable to Probate Duty (*Swabey* v. *Swabey*, 15 Sim. 502).

(*b*) *Debts due from testator.*

With regard to grants of probate or administration obtained before June 1, 1881, a return of duty was allowed in respect of debts, if claimed within three years (5 & 6 Vict. c. 79, s. 23). Form of Affidavit, No. 132.

With regard, however, to grants taken out since June 1, 1881, a deduction of debts (and funeral expenses) may be taken in the first instance (s. 28 of 44 Vict. c. 12, Appendix); but only where the deceased died domiciled in the United Kingdom. Mortgage debts secured on leaseholds and policies of life assurance may, however, be deducted, although the deceased died domiciled abroad. The deduction of debts is optional, and where not taken in the first instance may afterwards be allowed. The debts to be deducted must be the personal debts of the deceased, and actually due at his death. An annuity which the deceased was under a legal obligation to pay is a debt due from his estate, and a deduction of the value as ascertained according to the tables annexed to the Succession Duty Act, 1853, may be taken. However, liabilities which have not actually ripened into debts cannot be deducted in the first instance (*e.g.* liabilities in connection with shares not fully paid, a lease for a term, etc.). They must not be voluntary debts, 24 & 25 Vict. c. 92, s. 3 [for example, no deduction can be taken of voluntary subscriptions (*Creed* v. *Henderson*, 54 L. J. Ch. 811), nor of promissory notes given without consideration (*Re Whitaker*, 42 Ch. D. 119)], nor primarily payable out of, nor capable of being reimbursed from, his real estate (see "Locke King's Act"), or from any other source.

DEBTS—*continued.*

All the debts in the United Kingdom can only be deducted where all the assets in the United Kingdom have been included in the affidavit, for where only English assets have been included, only English debts can be deducted.

A deduction of foreign debts, not covered by foreign assets, may, however, be taken in a corrective affidavit (Form D), when such debts must be vouched.

Return of Probate Duty and Estate Duty on the ground of debts. See "Rectification."

What have been held to be debts within s. 23 of 5 & 6 Vict. c. 79. See "Deductions" (against Probate Duty).

3. **Legacy Duty.**

A release of a debt due to the testator is a legacy chargeable with duty (*Attorney-General* v. *Holbrook*, 3 Yo. & Jer. 114); the gift lapses where the debtor predeceases the testator.

As to whether a general direction to hand over security to debtor would release the debt, whether the debtor predeceased or survived the creditor, see *Sibthorp* v. *Moxom*, 3 Atk. 580; 1 Ves. Sen. 49; *South* v. *Williams*, 12 Sim. 566.

Gift to A. of debts due from him to testator. This means the balance due to testator after deducting a debt due to A. from the testator (*Ekins* v. *Morris*, 8 W. R. 301).

Gift to A. of a debt due from him to testator means *primâ facie*—

(i.) A debt due from him solely (if any), and not a partnership debt (*Ex parte Kirk*; *In re Bennett*, 5 Ch. D. 800).

(ii.) A debt due to the testator solely, and not a share of a debt due to the firm of which the testator is a partner (*Maybery* v. *Brooking*, 7 D. M. & G. 673).

When the direction to pay (*a*) a debt due from testator, (*b*) the debt of another person is, or is not, a legacy, see "Legacy Duty."

A general direction to pay debts:—

(*a*) Operates as an execution of a general power of appointment in favour of the executor (*Wilday* v. *Barnett*, 6 Eq. 193); but a mere direction to pay debts takes the fund from the persons entitled in default of appointment only so far as it is required to pay debts (*Laing* v. *Cowan*, 24 B. 112).

(*b*) Charges therewith all testator's real estate devised by the will (*Clifford* v. *Lewis*, 6 Mad. 33); and such direction is not limited by a subsequent express charge (1) of specific debts on certain estates, or (2) of all the debts on the personalty; but it has been held to be so controlled by a charge of all the debts upon particular portions of the realty (*Thomas* v. *Britnell*, 2 Ves. Sen. 313; *Palmer* v. *Graves*, 1 Keen, 545).

A mere "authority" to pay debts is, however, not equivalent to a "direction" to pay them, and therefore will not charge the real estate (*In re Head's Trustees and Macdonald*, 45 Ch. D. 310).

(*c*) Includes all testator's legal debts, but not debts barred by statute.

A direction by testator that his debts shall be paid by his executors charges exclusively the assets which come to them *quâ* executors, and therefore only real estate where they are the devisees (*Cook* v. *Dawson*, 29 Beav. 123; *Re De Burgh-Lawson*, 41 Ch. D. 568).

DEBTS—*continued.*

It would appear to be immaterial that the devise to the executors is of an estate tail or of an estate for life; but where the devise is to only one of several executors, or where unequal interests are devised to them, the real estate is not charged (Theobald, 4th ed. 672).

Where the direction is to pay the testator's debts, including (say) £100 owing to A., where the amount of the debt is £80 only, A. will not be entitled to receive more than the £80 (*Wilson* v. *Morley*, 5 Ch. D. 776).

The charge of the real estate with debts does not of itself discharge the personal estate (*Bootle* v. *Blundell*, 1 Mer. 193).

Where A. directs his executors to sell his real and personal estate and pay thereout *inter alia* his debts and legacies, the debts need not be apportioned, but may be deducted wholly from the personal estate as against Probate (or Estate) Duty (*Percival's Executors* v. *The Queen*, 3 Hurlst. & Colt. 213).

Where A. bequeaths a legacy to B. in satisfaction of a debt, B. must elect to take under or against the will; the legacy carries interest from the death (*Clarke* v. *Sewell*, 3 Atk. 99).

A bequest of £500 to A., described as the amount due from him to testator, entitles A. to the £500, although the debt may be paid in testator's lifetime (*Vickers* v. *Pound*, 6 H. L. 885).

Where testator directs that A. is to be released from all claims in respect of moneys "now owing" to him, and all other moneys due from him, the release will cover advances made to A. since the date of the will (*Everett* v. *Everett*, 7 Ch. D. 428).

A. (testator) releases a debt due to him, and part of which was afterwards received by him, the gift is adeemed *pro tanto*. A. (testator) bequeaths a legacy to B. (who is a debtor of A.'s). Apart from any expressed intention, this will not release B.'s debt (*Eden* v. *Smyth*, 5 Ves. 341).

A trust for accumulation for the purpose of paying off debts and incumbrances upon the estate of testator is valid (*Lord Southampton* v. *Marquis of Hertford*, 2 V. & B. 54, 65), and is excepted from the Thellusson Act (*Varlo* v. *Faden*, 27 Beav. 255).

A debt is distinguished from a mere liability (*Whittaker* v. *Kershaw*, 45 Ch. D. 320; *Jervis* v. *Wolferstan*, L. R. 18, Eq. 18). See "Calls."

Order of assets for payment of debts, see "Assets."

As to charge of debts on the residuary real estate and personal estate by operation of the rule in *Greville* v. *Browne*, see "Mixed Funds."

A direction by testator to pay the debts of A. would only include the debts legally subsisting at his death, but not statute barred debts (*O'Connor* v. *Haslam*, 5 H. L. 170).

Satisfaction of debts by legacies, see "Satisfaction."

A charge of debts (or legacies) on real estate not devised to trustees gives executors a power of sale (Lord St. Leonard's Act, 1859, ss. 14, 16). Where, however, the executor has renounced and an administrator *cum testamento annexo* has been appointed, such administrator being the officer of the Court has no such power either under the terms of the will or under the said Act (*Re Clay and Tetley*, 16 C. D. 3).

DECEASED PERSON.

The expressions "deceased person" and "the deceased" in the Finance Act, 1894, mean a person dying after Aug. 1, 1894 (s. 22 (1 *a*)).

DECEASED WIFE'S SISTER.

Before May 31, 1835, marriage with a deceased wife's sister was voidable by the parties; but if not declared invalid during their lifetime, was held to be legal (5 & 6 Will. 4, c. 54).

Subject to the above enactment, gifts by a testator to a deceased wife's sister are chargeable with duty as gifts to a stranger in blood to the deceased.

DECLARATION OF TRUST.

A valid and binding declared trust is *primâ facie* made if—

1. The settlor has used language evincing an intention to create a trust, and such intention is not negatived by the surrounding circumstances.
2. The trust is either created by will, or based upon valuable consideration; or (if neither) the trust property has been either transferred to a trustee, or the settlor has constituted himself a trustee of it for the purposes of the trust.
3. The trust property is of such a nature as to be capable of being settled.
4. The object of the trust is lawful.
5. The settlor has complied with the provisions of the law as to evidence.

But a trust, *primâ facie* valid, may yet be impeachable from—

1. Incapacity of the settlor, or of the beneficiaries.
2. Some mistake made by, or fraud practised on the settlor, upon its creation.
3. Fraudulent intention by the settlor to defeat or delay his creditors.
4. Infringing the provisions of the Bankruptcy Acts.
5. Fraudulent intention by the settlor to defeat the claims of future purchasers from him.

The circumstances under which the trust was created, may, however, be such as to necessitate a very liberal construction being given to the language in which it was declared, so as to give effect to the manifest intentions of the settlor (Underhill on Trusts, 4th ed. 18–20).

DEDUCTIONS.

I. Against Estate Duty.

(*a*) *Against the principal value.*

1. Debts and Funeral Expenses.

S. 7 (1) of the Finance Act, 1894, enacts that in determining the value of an estate for the purpose of Estate Duty, allowance shall be made for reasonable **funeral expenses** (*q.v.*) and for **debts** and **incumbrances**, which expression includes mortgages and terminable charges (22 (i) *k*), valued as at the death, according to the Tables annexed to the Succession Duty Act, 1853; but an allowance shall not be made—

For debts incurred by the deceased, or incumbrances created by a disposition made by the deceased (*a*), unless such debts or incumbrances were incurred or created *bonâ fide* for full consideration in money or money's worth (*b*), wholly for

(*a*) Ancestral incumbrances can, if subsisting at the death, be deducted, whether or not created for money's worth, and where deceased was a devisee of real estate charged with debts, a deduction can be taken of any debts so charged remaining payable out of the estate at the death.

(*b*) Therefore, a sum covenanted to be paid on his death by the deceased in consideration of marriage cannot be deducted; nor can voluntary debts, promised subscriptions, promissory notes given without consideration or the like. See "Debts."

DEDUCTIONS—*continued.*

the deceased's own use and benefit (*a*), and take effect out of his interest (*b*); nor

For any debt in respect whereof there is a **right to reimbursement** from any other estate or person, unless such reimbursement cannot be obtained (*c*); nor

More than once for the same debt or incumbrance charged upon different portions of the estate;

and any debt or incumbrance for which an allowance is made shall be deducted from the value **of the land or other subjects** (*d*) **of property liable thereto.**

An allowance shall not be made in the first instance for debts due from the deceased **to persons resident out of** (*e*) **the United Kingdom** (unless contracted to be paid in the United Kingdom, or charged on property situate within the United Kingdom), except out of the value of any personal property of the deceased situate out of the United Kingdom in respect of which Estate Duty is paid, and there shall be no repayment of Estate Duty in respect of any such debts, except to the extent to which it is shown to the satisfaction of the Commissioners that the personal property of the deceased, situate in the foreign country or British possession in which the person to whom such debts are due resides, is insufficient for their payment.

2. **Incumbrances created by tenant-for-life and remainderman** under a settlement in exercise of a joint power.

A. and B. (only son of A.) were respectively equitable tenant-for-life and tenant-in-tail in remainder of certain real and personal estate.

(*a*) Where partial consideration in money or money's worth gives a *pro tanto* deduction can be taken (cf. s. 3 (2)).

(*b*) "A disposition taking effect out of the interest of the deceased person shall be deemed to have been made by him, when the concurrence of any other person was or was not required" (s. 22 (2 *b*)). As to incumbrances created for money or money's worth, where the tenant-for-life and tenant-in-tail join in barring the entail and resettling to such uses as they shall jointly appoint, the disposition is considered to be that of the tenant-in-tail. See "Predecessor;" Estate Duty"—Examples. As to mortgage created by expectant successor, see "Mortgage."

(*c*) Where a person dying after Aug. 1, 1894, has become guarantor or surety for another person, no allowance against Estate Duty in respect of the amount guaranteed is to be made under the Finance Act, 1894, any more than such an allowance would have been made against Probate Duty under the Acts previously in force, unless and until the amount guaranteed by the deceased ripens from a mere liability into a debt, and is actually recoverable from his estate. Debts payable by the representatives of a deceased person as a guarantor or surety are now dealt with as coming within s. 7 (1) (*b*), and not within s. 7 (1) (*a*), Finance Act, 1894; see also s. 28 of 44 Vict. c. 12.

Example.—A. (*ob.* Jan. 1, 1897), became surety for the payment by his son B. of £800 to a bank. B. becomes bankrupt, his estate paying 2*s.* in the £. A.'s representatives are called upon to pay the £800 to the bank, and have a right of reimbursement against B., so that no allowance against the Estate Duty payable in respect of A.'s estate can be made except to the extent to which no reimbursement can be obtained, *i.e.* to the extent of the difference between the £800 and 2*s.* in every £ of the £800, viz. £80, so that the allowance to be made in this case is to the extent of £720.

(*d*) See "Locke King's Act." A mortgage of real and personal property will be apportioned *pro ratâ* (*Re Atholl*, 16 Ch. D. 211), and a deduction will only be taken against a collateral security, when the primary security is insufficient, and then to the extent of such insufficiency.

(*e*) See "Foreign Debts."

DEDUCTIONS—*continued.*

A. and B. had power under the settlement to jointly appoint the whole equitable interest to such uses as they desired.

They exercised the power thus:—

They mortgaged the equitable interest to C., on condition that C. should (1) pay off A.'s debts, taking an assignment of the securities on A.'s life interest (which he had heavily incumbered) held by his creditors as further security, and (2) advance certain sums to A. and B. respectively.

B.'s consideration for joining in this transaction and resettling the estate, by which he cut down his expectant interest to a life interest, was an annuity granted by A. and charged on his (A.'s) life estate.

Subsequently, A. and B., in exercise of the same power, further mortgaged the estate.

A. died Feb. 28, 1895 (after the Finance Act), and B. claimed to deduct against Estate Duty, the amount of all the said mortgages, and the capitalized value of the annuity.

It was held that under s. 2 (1*b*) and 7 (7*b*) of the Finance Act, 1894, he was entitled to a deduction of the full amount of the mortgages, but not to a deduction of the capitalized value of the annuity.

The Court of Appeal, however, held that no deduction should be allowed either in respect of the mortgage debt, or in respect of the annuity. See "Cowley Case."

The case is under appeal to the House of Lords.

3. As to deductions which may be taken—

In ascertaining the net annual value on which the principal value of agricultural property is based for Estate (and Succession) Duty purposes, see "Agricultural Property."

4. **Additional expense** in administering or realizing property abroad, limited to a maximum of 5 per cent. on the value of the property (s. 7 (3)).

5. **Foreign death duties** (s. 7 (4)).

6. **Costs.** No deduction is allowed for costs incurred in the sale of real estate, leaseholds, furniture, pictures, works of art, and the like. But where it can be clearly demonstrated that an enhanced value of property (such as furniture, pictures, etc.) beyond that which it had at the death of the deceased has been realized by special expense incurred, though costs for conveyance, expenses incidental to the sale, and commission charged, will not, as such, be admitted as a deduction, yet the special circumstances of the case may, in a proper case, be taken into consideration in arriving at the "true value in the opinion of the Commissioners."

(*b*) *Against the Estate Duty itself.*

(i.) "A sum equal to the amount" of the Colonial Death Duty paid in respect of any [moveable] property passing by a death on or after Aug. 2, 1894, of a person domiciled in the United Kingdom, and where such property is situate in a British possession to which s. 20 has been applied by an Order in Council, may be

DEDUCTIONS—*continued.*

deducted from the Estate Duty payable in respect of that property or the same death; but only where by the law of such possession either no duty is chargeable in respect of property situate in the United Kingdom when passing on death, or a like allowance as against the duty chargeable in such possession is made in respect of any duty payable in the United Kingdom.

But the deduction of the Colonial Duty is not to exceed the amount of the Estate Duty chargeable on the colonial property which has paid the Colonial Death Duty. But a deduction of excess Colonial Duty may, with the same limitation, be taken against Settlement Estate Duty on the same property.

(ii.) S. 21 of the Finance Act, 1896, enacts that—

Where on the death of a deceased person Estate Duty becomes payable by a person in respect of any property passing under a settlement made by a will or disposition which took effect before the commencement of the principal Act (*a*), and before that commencement any duty mentioned in paragraphs 3 to 5 of the first schedule to the principal Act has been paid or is payable under the same will or disposition on the capital value of the property, the Commissioners of Inland Revenue **shall allow the duty so paid or payable as a deduction from the Estate Duty** to the extent to which it has been paid or is payable in respect of the property on which Estate Duty is payable (*b*). This allowance, if the property in question has not depreciated in value, is **the actual amount of the prior duty** "paid or payable;" but where the property has depreciated in value, only 1 per cent. on such depreciated value.

(iii.) Where a fixed duty of 30*s.* has been paid, and it is discovered that 50*s.* should have been paid, the deduction of 30*s.* is allowed; no deduction, however, allowed of a fixed duty, 30*s.* or 50*s.*, against an *ad valorem* duty (44 Vict. c. 12, s. 35, Finance Act, 1894, s. 16 (1)). However, in certain cases of *bonâ fide* mistake the deduction is conceded (s. 8 (1)).

Examples.

1. Succession Duty commuted (1 or $1\frac{1}{2}$ per cent.) in respect of cesser of curtesy.

   Husband dies after Finance Act, 1896 (1 July).

   Allowance to be made in respect of such Succession Duty.

2. A. (*ob.* 1890) by will devises real estate upon trust to sell and proceeds to B. for life (*ob.* July 2, 1896) and on his death to his children, that is to others liable to the same rate of duty.

(*a*) In practice this section is extended to cases where Succession, etc., Duty has been commuted—

(i.) **On a sale of Settled Real Estate**, by tenant-for-life and remainderman, where the proceeds remained on the same trusts.

(ii.) **On a transfer of Settled Personal Estate** from the trustees, who were then released, into the joint names of the tenant-for-life and reversioner, with an agreement preserving the former interests.

(*b*) The additional succession duties under s. 21 of 51 Vict. c. 8; the Temporary Estate Duties under 52 Vict. c. 7; and the 1 per cent. Legacy and Succession Duties.

DEDUCTIONS—*continued.*

Legacy ("Succession") Duty paid on (say) £15,260 = £228 18*s.*
Temporary Estate Duty paid at 1 per cent. on ditto = £153
Value of Real Estate on B.'s death (say) = £11,090
Estate Duty (4 per cent.) = £440

Allow (*a*)—

1½ per cent. Succession Duty on £11,090 = £166 7*s.*
1 per cent. Temporary Estate Duty on £11,100 = £111 0*s.*
£277 7*s.*
£277 7*s.* £162 13*s.* payable.

II. **Against Settlement Estate Duty.**

"Any person paying the Settlement Estate Duty payable under this section upon property comprised in a settlement, **may deduct the amount** of the *ad valorem* **Stamp Duty** (if any) charged on the settlement in respect of that property" (Finance Act, 1894, s. 5 (4)).

That is, the Stamp Duty charged on such settlement in respect of such settled property may be deducted from the Settlement Estate Duty.

This Stamp Duty (5s. per cent.) is imposed by the Stamp Act, 1891 (54 & 55 Vict. c. 39), sched., upon the value of personal property comprised in a settlement.

The settlement should be produced in support of the deduction.

Though it has been argued that the Settlement Estate Duty is a further or additional estate of duty of 1 per cent., and therefore by analogy to the Temporary Estate Duty leviable upon the same principal value as the Estate Duty, yet in practice the Estate Duty upon the said principal value is first allowed as a deduction.

III. **Against Probate Duty.**

Debts.

Under provision of s. 23 of 5 & 6 Vict. c. 79 (Aug. 5, 1842), where grant taken out before June 1, 1881, transferring the power of extending time for making a return of Probate Duty from the Commissioners of the Treasury to the Commissioners of Stamps.

And whereas by the said recited Act of the fifty-fifth year of the reign of King George III. the Commissioners of the Treasury are authorized to allow time for making claims for a return of Stamp Duty paid upon probates of wills and letters of administration in cases where an executor or administrator hath paid debts out of the personal or moveable estate of any deceased person, and it is expedient to authorize the Commissioners of Stamps and Taxes to allow time for making such claims: Be it therefore enacted, That where it shall be proved by oath and proper vouchers, to the satisfaction of the said Commissioners of Stamps and Taxes, that an executor or administrator hath paid **debts due and owing from the deceased, and payable by law out of his or her personal or moveable estate,** to such an amount as, being deducted from the amount or value of the estate and effects of the deceased, for or in respect of which a probate or letters of administration shall have been granted in England after Aug. 31, 1815, or which shall be included in any inventory duly exhibited and recorded after that day in a Commissary Court in Scotland, shall reduce the same to a sum

(*a*) But the allowance must not exceed the actual amount of the prior duties.

DEDUCTIONS—*continued.*

which, if it had been the whole gross amount or value of such estate or effects, would have occasioned a less Stamp Duty to be paid on such probate or letters of administration or inventory than shall have been actually paid thereon, it shall be lawful for the said Commissioners of Stamps and Taxes, and they are hereby required, **to return** the difference, provided the same shall be **claimed within three years after the date of such probate or letters of administration,** or the recording of such inventory as aforesaid; but where, by reason of any proceeding at law or in equity, the debts due from the deceased shall not have been ascertained and paid, or the effects of the deceased shall not have been recovered and made available, and in consequence thereof the executor or administrator shall be prevented from claiming such return of duty as aforesaid within the said term of three years, it shall be lawful for the said Commissioners of Stamps and Taxes **to allow such further time for making the claim** as may appear to them to be reasonable under the circumstances of the case.

It will be observed that here the return of duty is confined to debts and does not extend to funeral or testamentary expenses.

See, however, 44 Vict. c. 12, s. 28 (*infra*) and Finance Act, 1894, s. 7 (1).

Provision is not an obligation or "debt due and owing from the deceased" within the meaning of s. 23, and does not therefore entitle the executors to a return of Stamp Duty.

For example, where A. has entered into a covenant to leave and bequeath a sum of money or a share of his personalty to his daughter's trustees to be held upon the trusts of her marriage settlement, a bequest to her by A.'s will in satisfaction of the covenant will not be a debt within s. 23, but will be a legacy though made in pursuance of such a covenant (*Moir's Trustees* v. *Lord-Advocate*, 1 Sco. Sess. 4th Ser. 345; *Marshall's Executors* v. *Lord-Advocate*, 1 Sco. Sess. Ca. 4th Ser. 847; *Jervis* v. *Wolferstan*, 18 L. R. Eq. 18; see also *Attorney-General* v. *Murray*, 20 L. R. Ir. 124, C. A.).

But where A. has bound himself to secure a **certain sum** to his children, and by trust disposition has directed his trustees to pay B. (a son) £1000 in satisfaction of his share, this creates a debt within s. 23 (*Lord-Advocate* v. *Hagart's Executors*, 10 Sco. Sess. C. A. 3rd Ser. 62).

Where deceased's estate included stock in the City of Glasgow Bank, which during the administration went into liquidation, it was held that the calls paid by the executors in respect of such stock were debts within s. 23, notwithstanding the transfer of such stock into their names.

It was also decided that the market value of stock at the date of giving up the inventory is the value on which duty is payable, and the fact of a subsequent depreciation in value does not entitle the executors to a return (*Wishart's Executors* v. *Lord-Advocate* (*Galletly's Executors*) 18 Sco. L. R. 62).

Where deceased dies possessed of both English and foreign personalty and indebted to English creditors in respect of debts contracted in England, the value of the foreign personalty cannot be taken into account with reference to a claim to repayment of duty under s. 23 (*Reg.* v. *Commissioners of Stamps, Re Ostell*, 18 L. J. R. (Q. B.) 201).

Executors are not entitled to a repayment of duty, under s. 23, in respect of mortgage debts which they are not justified in paying out of testator's

DEDUCTIONS—*continued.*

personal estate (*Re Taylor's Estate*, 8 Ex. 384; see also *Barham* v. *Earl of Thanet*, 3 Mylne & K. 607); "the purchaser of an estate subject to a mortgage who has no contract or communication with the mortgagor, and who merely covenants with the vendor to pay the mortgage debt, does not thereby make the debt his personal debt," per Sir J. Leach, M.R., p. 624.

The consent of the Crown is necessary in any application to the Court of Exchequer requiring the Commissioners of Inland Revenue to return Probate Duty under 5 & 6 Vict. c. 79 (*In the Goods of Webster*, 35 L. T. 47).

Where Commissioners decline to return duty the remedy is by way of petition of right, though it depends upon the fiat of the Attorney-General being given (*Reg.* v. *Commissioners of Inland Revenue, In re Nathan*, L. R. 12 Q. B. D. 461).

Where a testator devised his real estate and personal estate upon trust for sale, and directed his executors to pay out of the proceeds his funeral and testamentary expenses, debts and legacies, but the executors instead of selling the realty made all the payments out of the personalty, it was held they were entitled to a return of the full amount of the duty in respect of the total debts as "debts payable by law out of personal or moveable estate," and not to an apportionment thereof according to the respective values of the realty and personalty (*Percival's Executors* v. *The Queen*, 3 Hurlst. & Colt. 217).

Debts and Funeral Expenses (44 Vict. c. 12, s. 28).

Where the deceased died before Aug. 2, 1894, and where the grant has been taken out on or after June 1, 1881, the following deductions from the gross assets may be taken in the first instance in the case of a person dying domiciled in any part of the United Kingdom—

I. **Debts due and owing from the deceased** (*a*), *i.e.* due from him personally to creditors resident here, and payable by law out of any part of the estate and effects comprised in the grant or inventory. Where the debt is for "money lent," or "overdraft" to a bank, the date of the debt, the particulars of the security given, or, if none, the particular evidence relied on, showing that it is legally recoverable, should be stated.

Calls on bank shares are also allowed, when made, for they are liabilities at the death subsequently ripening into debts.

MORTGAGE DEBTS secured on leaseholds (31 & 32 Vict. c. 124, s. 7) and on policies of assurance (31 & 32 Vict. c. 144) may, however, be deducted, notwithstanding the deceased died DOMICILED ABROAD.

Debts which cannot be deducted—

1. VOLUNTARY debts expressed to be payable on the death of the deceased, or payable under any instrument which shall not

(*a*) Therefore where a married woman and her husband have borrowed money on the security of her estate, but for the benefit of the husband, the latter on surviving his wife cannot take a deduction in respect of this debt, which is his debt. As a rule English debts can only be deducted against English assets; but a deduction of FOREIGN debts, not covered by foreign assets, may be taken in a corrective Affidavit (form "D."), when such debts must be vouched. Voluntary subscriptions cannot be deducted. See *Creed* v. *Henderson* (54 L. J. Ch. 811).

DEDUCTIONS—*continued.*

have been *bonâ fide* delivered to the donee thereof three months before the death of the deceased, and 24 & 25 Vict. c. 92, s. 3, expressly prohibits any RETURN of DUTY being made in respect thereof. "Voluntary debt" means a debt not in consideration of marriage or of money or money's worth (*a*).

2. DEBTS in respect whereof any REAL ESTATE may be PRIMARILY liable, for example, a mortgage not created by the deceased but charged on real estate acquired by him.
3. Debts in respect whereof a reimbursement is capable of being claimed from any REAL ESTATE of the deceased or from any other estate or person whatsoever; for example, a mortgage debt created by deceased himself on his real estate but which is payable by his heir or devisee under Locke King's Act.
4. A debt for payment of which the deceased was SURETY only.
5. A covenant (*q.v.*) to bequeath a share of residue; otherwise, where the covenant is to pay a fixed sum on death.

II. **Funeral expenses**, *i.e.* "reasonable funeral expenses according to law," therefore deduction cannot be taken of expenses in respect of embalming, bringing body home from abroad, tomb, or mourning (*Johnston* v. *Baker*, 2 Carr. & Pay. 207; see also *Bridge* v. *Brown*, 2 Y. & Coll. C. C. 181).

IV. **Against Succession Duty.**

Successions to Real Property.

Unless the successor is "competent to dispose" of the subject of the succession, the calculation for duty where the deceased dies after Aug. 1, 1894, remains practically the same as before the Act.

Where death was on or after Aug. 2, 1894 (Finance Act, 1894),

S. 9 (1) enacts that "a rateable part of the Estate Duty on an estate, in proportion to the value of any property which does not pass to the executor as such, shall be first **charge on the property** in respect of which duty is leviable." Therefore where Whiteacre passes by the death of A., and is liable to Estate Duty and also to Succession Duty (for example, where it passes to a collateral), Estate Duty is a charge on the property itself, and has priority to the Succession Duty which is a charge on the interest of the successor (s. 42 of 16 & 17 Vict. c. 51); the principal value of the property, after deducting the Estate Duty thereon, will in such a case be the value for Succession Duty, where the successor is "competent to dispose" (s. 18 (1)).

The principal value of agricultural property for the purposes of Succession Duty is ascertained in the same manner as it would be for Estate Duty, and the Estate Duty thereon can be taken as a deduction. See also "Agricultural Property," as to deduction for expenses of management.

S. 22 of 16 & 17 Vict. c. 51 enacts that—

"In estimating the annual value of lands used for agricultural purposes, houses, buildings, tithes, teinds, rent-charges, and other property

(*a*) A deduction may, however, be taken in respect of money contracted to be paid on the death of the deceased in consideration of marriage, see *Lord-Advocate* v. *Hagart* (10 Sco. Sess. Ca. 3rd Ser. 62).

DEDUCTIONS—*continued.*

yielding, or capable of yielding, income not of a fluctuating character, an allowance shall be made of all necessary outgoings."

1. Where **actual outgoings** :—

Chief rents.

Fire insurance.

Repairs. No fixed rule is laid down as to the percentage (on the gross rental) which can be taken as a deduction, each case being determined on its own merits; but generally speaking, the allowance for buildings, etc., on farms is from 5 per cent. to 7½ per cent., for ordinary house property (10 per cent.), for cottage property (12 per cent. to 15 per cent.). No deduction can of course be taken where, as in repairing leases, the repairs are executed by the tenant and not by the owner.

Fines, fees, and other compositions incident to tenure (s. 28). This kind of deduction is only allowed where the fines, etc., have been actually paid. The deduction to be taken is such an annuity, as for the life of the successor, or for such shorter period as the successor's interest may continue, is, by the tables annexed to the Succession Duty Act, equal in value to the capital of the fines and fees paid.

Where trustees are admitted the deduction will be 3 per cent. on the amount paid to the steward of the Manor. This will cover the admission of the remainderman, should the trustees survive the tenant-for-life. But see "Fines."

Deduction may also be taken in respect of the consideration paid for compulsory (though not for voluntary) enfranchisement. See "Copyholds."

Charges on property.

Annuities: dower.

Legacies (3 per cent. on the *corpus*).

Jointures.

Rent-charges.

Mortgages (*a*) secured on the property created by the predecessor or his predecessor in title; but not where created by the successor; a deduction can, however, be taken in respect of any incumbrance created or incurred by the successor in execution of a prior special power of appointment (jointure, portions, etc.), or of any moneys which, previously to his possession, he has laid out in substantial repairs, or the permanent improvement of the property comprised in his succession.

Unpaid instalments of duty (3 per cent. thereon) in respect of succession of predecessor (s. 21).

Deficiency of personalty (3 per cent. thereon), where a charge on the property.

Relinquished property (s. 38); but see *infra*.

(*a*) As regards building society mortgages, which are usually paid off by annual sums compounded of capital and interest, a deduction may be taken of 3 per cent. on the sum which at the death would discharge the mortgage.

DEDUCTIONS—*continued.*

No deduction, however, is allowed in respect of costs incurred in litigating title, or for property tax, expenses of management, collection of rent, losses from bad tenants, nor in respect of any contingent incumbrance (s. 35); but where such contingent incumbrance takes effect as a burden on the interest of the successor, a proportionate part of the duty is to be returned. See *infra.*

2. Where actual goings, in respect of property actually let, and where payable by the owner:—

Tithes and tithe rent-charge.

Rates (sewers' rate, improvement, highway, water, county, town, drainage, and poor rates).

House tax and land tax.

Drainage, and repair of sea walls.

3. As to what are "necessary outgoings" which may be deducted from proceeds of sale of timber, see "Timber."

Successions to Personalty.

1. Where real estate is directed to be sold, legacies, and annuities charged wholly or in part thereon, debts on mortgage with interest (if any) to date of account or payment off, costs of sale (but not estimated costs), and, in certain cases, the deficiency of the personal estate may be deducted.
2. S. 33 of 16 & 17 Vict. c. 51 provides that a donee of a general power of appointment, where chargeable in respect of the property appointed by him under such power, is to be allowed to deduct from the duty so payable any duty already paid by him in respect of any limited interest in the property appointed.
3. A deduction can be taken of Account Duty in appropriate cases, see *In re Croft; Deane* v. *Croft*, 40 W. R. 425.

Allowances (ss. 22, 23, 34, 38).

(*a*) **Income Tax on Realty, and Costs of Collection of Rents** (s. 22).

In calculating the value of a succession, no allowance can be made by the Commissioners, in respect of INCOME TAX on realty, nor on stock the produce of realty, nor of COSTS OF COLLECTION OF RENTS of realty, during temporary absence of owner abroad (*In re Elwes*, 3 Hurlst. & Norm., 719).

Income tax and expenses of managing estate are not "NECESSARY OUTGOINGS" within s. 22. The term means "all such (outgoings) as are intrinsically necessary—such outgoings as it was not in the option of the predecessor to spend or not as he pleased" (*per* Bramwell, B., p. 294; *In re Earl Cowley*, Law Rep. 1 Ex. 288, 12 Jur. (N. S.) 607).

(*b*) **Timber** (s. 23).

Where a successor had paid Succession Duty on the value of woodlands as entered in the valuation roll, it was held that he was chargeable under s. 23, but was entitled to credit for the amount paid by him, in name of Succession Duty, on the woodlands on said estate, in so far as these are occupied by timber, trees, or wood, not being coppice or underwood, and not yielding any value except such as arises from sales of wood (*Lord-Advocate* v. *Marquis of Ailsa*, 19 Sco. L. R. 28).

DEDUCTIONS—*continued.*

(*c*) **Incumbrances** (within s. 34).

A. and B., respectively tenant-for-life and tenant-in-tail in remainder, joined in disentailing and resettling the estate thus (subject to the payment of an annuity to B. during the joint lives of A. and B.): to A. for life, remainder to pay W. (widow of A.) an annuity of £1000 a year for life, remainder to such uses as they should jointly appoint. They exercised the joint power, and raised £90,000 on mortgage, partly for A.'s sole benefit, and partly for the joint benefit of A. and B. They also appointed an annuity of £500 to C. (son of B.) for life, and subject thereto to B. for life. The mortgages, considered for the purposes of the Succession Duty Act, were INCUMBRANCES on the succession created by B., and not made "in execution of a prior special power of appointment" within s. 34. B. was, therefore, not entitled upon A.'s death, in 1854, to any allowance in respect thereof. An allowance was, however, made in respect of W.'s annuity (to avoid a double charge of duty, inasmuch as she (W.) was chargeable with duty thereon, as a succession derived from her son), though not in respect of the annuity to C. (*Re Peyton*, 7 Hurlst. & Norm., 265).

(*d*) **Allowances to Successor in respect of Relinquished Property** (s. 38).

A., on the marriage of his daughter B. with C., covenanted by settlement made in view of such marriage, to pay £500 per annum to B. and C. during their lives, provided that if C., by reason of his brother's death without issue male, should succeed to certain estates, the annuity should cease.

C.'s brother died Sept. 1, 1853, without issue, C. came into possession of the estates, and the annuity ceased. *Held*, that in assessing the duty chargeable, C. was entitled to an ALLOWANCE in respect of the loss of the annuity (*In re Mickleth waite*, 11 Ex. 452).

A., tenant-for-life, and B., tenant-in-tail in remainder, barred and resettled. Under the resettlement B. was entitled to a rent-charge of £1200 a year charged on the estate. *Held*, that B. was entitled to an ALLOWANCE in respect of such rent-charge, which ceased on A.'s death in 1858 (*Lord Braybrooke* v. *Attorney-General*, 9 Ho. Lds. Cas. 150).

A., tenant-for-life, and B., tenant-in-tail in remainder, bar and resettle. Under the resettlement B. was entitled to an annuity (during the joint lives of himself and A.) charged on the estate. *Held*, (1) that B. was entitled to an allowance in respect of such annuity in calculating the Succession Duty payable by him on A.'s death. (2) That he is entitled to such allowance whether such annuity was created before or after May 19, 1853 (*Commissioners of Inland Revenue* v. *Harrison*, L. R. 7 Eng. & Ir. App. 1).

A., tenant-for-life, and B., tenant-in-tail in remainder, bar and resettle to such uses as they should jointly appoint. They appointed £20,000 to be settled on the trusts of B.'s marriage settlement, A. covenanting to pay three per cent. from date of marriage, so long as the £20,000 (secured by mortgage) should remain due to the trustees. On A.'s death it was held that B. was entitled to an ALLOWANCE in respect of the £600 per annum (*Le Marchant* v.

DEDUCTIONS—*continued.*

Commissioners of Inland Revenue, L. R. 10 Exch. 292, and 1 Exch. Div. 185).

Effect of 52 Vict. c. 7, s. 10, sub-s. (1).

In respect of successions taken on or after June 1, 1889, the ALLOWANCE under s. 38 is "only to be made in respect of the value of property, which the successor may have acquired by any title not conferring a succession upon him, and which passes from the successor to some other person."

For example, property P. may be limited "by a title not conferring a succession upon" S. for life, or until he becomes entitled in possession to property Q., which stands limited to R. for life, remainder to S. for life. Here, on the death of R., S. on paying Succession Duty on property Q. is entitled, under this sub-section, to an allowance in respect of the value of property P., which "passes from" him to the person entitled in remainder. See Hanson, 4th ed., 59.

Effect of s. 41 of 44 Vict. c. 12.

By a marriage settlement certain funds were settled upon trust to pay the income to A. (wife) for life (*ob.* 1876).

Remainder to B. (husband) for life.

Remainder to children attaining twenty-one years of age.

A. left one son (C.), who attained twenty-one, and died June, 1880, intestate.

B. took out letters of administration to C.'s estate, and paid the 3 per cent. Administration Duty on C.'s reversionary interest, in said funds under s. 27 of 44 Vict. c. 12.

Held, that there was no further liability to pay the 1 per cent. Succession Duty on the son's reversionary interest in the settled funds (s. 41 of 44 Vict. c. 12) (*Re Haygarth's Trusts*, 22 Ch. D. 845).

V. **Against Legacy Duty.**

I. **In Residuary Account (Form No. 3).**

1. Probate or Administration Duty, and Temporary Estate Duty, and fees (death before Aug. 2, 1894).
2. Estate Duty and Settlement Estate Duty (but see Finance Act, 1896, s. 19) and fees (death on or after Aug. 2, 1894).
3. Funeral expenses.

No deduction, however, can be taken for mourning, embalming, and bringing body home from abroad, or cost of monument (*Johnston* v. *Baker*, 2 Carr. & Pay. 207).

Executors have no authority to spend money on a tombstone or monument without the consent of all the residuary legatees (*Bridge* v. *Brown*, 2 Y. & Coll. C. C. 181). In this case £20 for a tombstone was disallowed, and only £10 allowed for the mourning of the widow and two daughters, although the executors had spent £35 thereon.

Where, however, testator has directed a tombstone to be erected, a deduction of the cost can be taken, where such direction is actually carried out. The amount to be allowed is determined by the circumstances of the case.

4. Executorship or administration expenses.

The actual (and not estimated) costs should be inserted, which should

DEDUCTIONS—*continued.*

not include cost of preparing legacy and annuity receipts and the residuary account.

Costs in an administration suit can be deducted. Costs in an administration suit, comprising both realty and personalty, are in practice apportioned between the real estate and the personal estate according to their values, see "Costs."

Where in an administration suit the executors procure the validity of the will to be admitted by paying a portion of the testator's property to his next-of-kin, no deduction can be taken in the residuary account of any money so paid, but duty must be paid on the whole residue (*Reg.* v. *Commissioners of Stamps and Taxes, Stracey's Case*, 6 Q. B. 657; see Hanson's Death Duties, 4th ed.).

Where costs have been taxed the taxing-master's certificate should be produced.

5. Debts on simple contract, rent and taxes, wages, etc., due at the death. An executor may pay a statute-barred debt, but not where charged on land, for there the remedy is not only barred, but the right to the debt is extinguished; and after decree or judgment for administration any of the other creditors, or even the legatees or next-of-kin, may object to the payment of a statute-barred debt. A deduction cannot, moreover, be taken in respect of "voluntary subscriptions" promised by the deceased (see *Creed* v. *Henderson*, 54 L. J. Ch. 811).

6. Debts on mortgage with interest (if any) due at the death.

Where the testator's real and personal estate are given to the SAME person, it seems that, notwithstanding the provisions of Locke King's Act and amending Acts, "he may require the whole personal estate to be applied in discharge of the mortgage debt (in like manner as the mortgagor's heir-at-law, being also his sole next-of-kin, may apply whichever fund he pleases for that purpose), and therefore under such circumstances deduction may be taken" (*a*) under s. 28 of 44 Vict. c. 12 against Probate Duty, and also in the residuary account against Legacy Duty; but not also in the succession account against Succession Duty.

7. DEBTS on bonds and other securities with interest (if any) due at death.

8. Other payments out of the estate—

Legacies, including duty on those given duty free.

Capital sums set apart to answer annuities given by the will; further duty being payable when the funds so set apart fall in by the respective deaths of the annuitants; or,

The values of the annuities so given, where it is desired to close the account, no further duty being here payable on the deaths of the annuitants. This course can only be adopted where the parties tendering duty—

Pay the duty in full (*b*) in respect of the said annuities;

(*a*) See Hanson's Revenue Acts of 1880 and 1881, p. 30.

(*b*) A deduction can, however, now be taken, where the duty is paid by instalments, but in this case the undertaking as to the readjustment must be signed by the executors themselves, and not merely by their agents.

DEDUCTIONS—*continued.*

Undertake, in the event of a claim being made for a return of overpaid duty, by reason of the death of any annuitant before all the instalments of duty shall have become due, to readjust the deduction in the residue account (*a*).

And where the accounting parties certify that the annuitants are in ordinarily good health.

9. Payments out of interest up to the date of the account—
Interest on mortgages, bonds, and other securities due from the estate.
Interest on pecuniary legacies.
Payments on account of annuities.

II. Legacy Receipt (Form No. 1).

1. Where a legacy (say £2000) is given to A. (aged twenty) for life, and as he shall appoint, and in default of appointment to B., A. pays duty on the value of his life-interest, and when he subsequently appoints, on the £2000, allowance being made for the duty already paid in respect of his life-interest (36 Geo. 3, c. 52, s. 18).
2. Where a sum (say £1000) over which deceased had an absolute power of appointment is bequeathed to A., a deduction of the proportionate amount of Probate (and Temporary Estate) Duty payable thereon can be claimed (23 Vict. c. 15, ss. 4 & 5): also of Estate Duty under cases coming under the Finance Act, 1894.
3. Where a legacy (say £4000) is given to A. charged with an annuity of £50 to B., the duty on the legacy is calculated on its value after deducting the value of the annuity (36 Geo. 3, c. 52, s. 9).
4. Settlement Estate Duty (Finance Act, 1896, s. 19 (1), *q.v.*).

III. Account of proceeds of sale of Real or Leasehold Estate (Form No. 8.)

1. Debts on mortgage with interest (if any) to date of account or payment off.
2. Costs (actual, not estimated) of sale, including legal expenses.
3. Proportion of legacies or annuities (charged on a Mixed Fund) attributable to the Real Estate.
4. Deficiency of Personal Estate in certain cases.
5. Estate Duty payable on the Real Estate: that on the leaseholds comes out of the residue, see "Leaseholds."

DEED.

A deed is an instrument in writing under seal, which is expressed to be "signed, sealed, and delivered" by the parties thereto, and, in practice, the signing and delivery is attested by one or more witnesses.

A deed takes effect only from the time of delivery (which is presumed to be the date (if any) of the deed unless the contrary appears), but where delivered subject to a condition (when it is called an escrow) it does not operate until the performance of the condition, and then takes effect as from the original delivery.

A deed not intended to have any effect till the testator's death will take effect as a will (*Consett* v. *Bell*, 1 Y. & C. C. 569).

(*a*) Where the readjustment is made, the additional duty payable by the residuary legatee is calculated upon the excess of the sum actually deducted over the value of the annuity calculated according to the term for which the annuity shall have endured.

DEED—*continued.*

When two deeds which relate to the same subject-matter are executed on the same day, the Court will inquire which was executed first, but if anything appear therein to show the order in which they were intended to be executed they will be presumed to have been executed in that order in order to give effect to the manifest intention (*Gartside* v. *Silkstone & Co.*, 31 W. R. 36).

Deeds (delivery and deposit).

The delivery of title deeds to an estate will not operate to convey the estate.

The delivery of the mortgaged deeds is a good *donatio mortis causâ* of a mortgage debt on real estate (*Duffield* v. *Elwes*, 1 Bligh, N. S. 497).

A deposit of title deeds of an estate by a debtor in the hands of his creditor, or of some third person on his behalf, amounts to and is a valid mortgage of the estate. It is evidence of an agreement executed for a mortgage, and not therefore within the Statute of Frauds (which applies to executory agreements only) according to which contracts concerning land must be in writing.

Deeds relating to the inheritance follow the land to which they relate and vest in the heir, as incident to the estate, to the exclusion of the executor or administrator.

DEER IN A PARK.

Where reclaimed so as to pass to the executor or administrator of the owner on his death (*Morgan* v. *Earl of Abergavenny*, 8 C. B. 768), are liable to Probate Duty or Estate Duty as personal property.

DEMONSTRATIVE LEGACY.

A demonstrative legacy is a gift of a general nature, but primarily payable out of some particular fund, and has the advantages of both specific and general legacies, for whilst it has priority if the particular fund exists, yet if the particular fund has been called in, or has ceased to exist, there is no ademption, but the legacy will be paid out of the general assets.

Example.

"I give £100 to A. payable out of my £800 consols" (money out of stock).

It would seem that a demonstrative legacy carries interest a year from the death like a general legacy and not from the death like a specific legacy (*Mullins* v. *Smith*, 1 Dr. & S. 204; *Sleech* v. *Thorington*, 2 Ves. Sen. 560).

DENOTING STAMP. See "Freemark."

DEPOSIT OF TITLE DEEDS. See "Equitable Mortgage"; "Deed."

DESCENT.

1. **Of Borough English** lands, see "Borough English."
2. **Of gavelkind** lands, see "Gavelkind."
3. **Of tithes.**

   Not affected by any particular custom of descent, but descend according to the course of the common law (*Doe and Lushington* v. *Llandaff*, 2 N. R. 491).

4. **Copyholds.**

   An estate in fee simple in copyhold descends according to the custom of descent which may happen to prevail in the manor: and, subject thereto, the provisions of the Inheritance Act, 1833, apply to copyhold as well as freehold hereditaments, whatever be the customary course of their descent (*Re Smart*, 18 Ch. D. 165).

DESCENT—*continued.*

5. **Of incorporeal hereditaments** (Rent charges, etc.).

Descend like corporeal hereditaments to the same heir-at-law, but where the owner of a rent-charge died his estate could not escheat to his lord, for he had none.

The estate ceased to exist, and the lands out of which the rent-charge was payable were thenceforth discharged from its payment.

But see now Intestates Estates Act, 1884, "Escheat."

6. **Of an equitable estate.**

A *cestui que* trust of lands in fee simple has an equitable estate transmissible to his heirs, but his equitable interest in chattels will pass to his executors or administrators.

7. **Of an estate tail.**

The first four (*a*) rules of descent applicable to an estate in fee simple apply also to the descent of an estate tail, if not duly barred.

1. The descent of an estate tail is always traced from the last purchaser (the donee in tail) to whom, and the heirs of his body, the gift was originally made.

2 & 3. Also apply, unless the descent should be restricted to heirs male or heirs female, when Rule 2 and either clause of Rule 3 might be unnecessary.

4. The estate determines when the issue of the donee are exhausted.

8. **Of estate of trustee or mortgagee.**

By the Conveyancing Act, 1881, s. 30, estates of inheritance vested in any person solely by way of trust were made to devolve (notwithstanding any testamentary disposition) on his personal representatives for the time being, as if the same were a chattel real.

This section applies to all trustees, and not merely to bare trustees. However, this section does not apply to lands of copyhold or customary tenure vested in the tenant on the court rolls of any manor upon any trust (Copyhold Act, 1887, s. 45). Therefore, in the case of copyholds it would appear that the trustee's estate would devolve upon his customary heir or devisee.

9. **Of estate of married women,** see "Married Women's Property."

DESCENT OF PERSONAL ESTATE.

TABLE SHOWING THE DISTRIBUTION OF PERSONAL ESTATE (INCLUDING LEASEHOLDS FOR YEARS) UNDER INTESTACY.

If the Intestate die, leaving	His Representatives take in the proportion following.
Wife and child, or children	One-third to wife, rest to child or children; and if children are dead, then to the representatives (that is, their lineal descendants), except such child or children, not heirs-at-law, who had estate by settlement of intestate, or were advanced by him in his lifetime, equal to other shares.

(*a*) 1. That the inheritance shall lineally descend, in the first place, to the last purchaser in *infinitum*.

2. That the male issue shall be admitted before the female.

3. The eldest only of two or more of the male issue in equal degree of consanguinity to the purchaser shall inherit, but the females shall inherit all together.

4. All the lineal descendants in *infinitum* of any person deceased shall represent their ancestor.

DESCENT OF PERSONAL ESTATE—*continued.*

If the Intestate die, leaving	His Representatives take in the proportion following.
Wife only, no blood relations	Half to wife, other half to the Crown.
Wife, no near relations	Half to wife, rest to next-of-kin in equal degree to intestate, or their legal representatives.
No wife or child	All to next-of-kin and their legal representatives.
No wife, but child, children, or representatives of them.	All to child, or children equally, or if dead to their representatives, that is, their lineal descendants.
Children by two wives	Equally to all.
If no child, children, or representatives of them.	All to next-of-kin in equal degree to intestate.
Child, and grandchild by deceased child	Half to child, half to grandchild who takes by representation.
Husband	Whole to him.
Father and brother or sister	Whole to father.
Mother and brother or sister	Whole to them equally.
Wife, mother, brother, sisters, and nieces	Half to wife, residue to mother, brothers, sisters, and nieces.
Wife and father	Half to wife and half to father.
Wife, mother, nephews, and nieces ..	Half to wife, one-fourth to mother, and other fourth to nephews and nieces.
Wife, brothers or sisters, and mother ..	Half to wife, half to brothers or sisters, and mother.
Mother, but no wife, child, father, brother, sister, nephew, or niece.	The whole to mother.
Wife and mother	Half to wife, half to mother.
Brother or sister of whole blood, and brother or sister of half blood.	Equally to both.
Posthumous brother or sister, and mother	Equally to both.
Posthumous brother or sister, and brother or sister born in lifetime of father.	Equally to both.
Father's father and mother's mother ..	Equally to both.
Uncle or aunt's children, and brother's or sister's grandchildren.	Equally to all.
Grandmother, uncle, or aunt	All to grandmother.
Two aunts, nephew, and niece	Equally to all.
Uncle, and deceased uncle's child.. ..	All to uncle.
Uncle by mother's side, and deceased uncle or aunt's child.	All to uncle.
Nephew by brother, and nephew by half-sister.	Equally *per capita*.
Nephew by deceased brother, and nephews and nieces by deceased sister.	Each in equal shares *per capita*, and not *per stirpes*.
Brother and grandfather.	All to brother.
Brother's grandson, and brother or sister's daughter.	All to daughter.
Brother and two aunts	All to brother.
Brother and wife	Half to brother, half to wife.
Mother and brother..	Equally.
Wife, mother, and children of a deceased brother (or sister).	Half to wife, a fourth to mother, and a fourth *per stirpes* to deceased brother's or sister's children.
Wife, brother, or sister, and children of a deceased brother or sister.	Half to wife, one-fourth to brother or sister *per capita*, one-fourth to deceased brother's or sister's children *per stirpes*.
Brother or sister, and children of a deceased brother or sister.	Half to brother or sister *per capita*, half to children of deceased brother or sister *per stirpes*.
Grandfather, no nearer relation	All to grandfather.

DESCENT OF PERSONAL ESTATE—*continued.*

By the Act 19 & 20 Vict., all special *local* customs relating to intestates' estates, are abolished.

No taking by representation after brother's and sister's children, see 22 & 23 Car. 2, c. 10, s. 7.

The husband is not entitled to his wife's effects under the statute, but under the Common Law, he would not therefore take any share of his wife's effects if given by any deed or will to "her next-of-kin" at her decease. See *Milne* v. *Gilbart*, 2 D. M. & G. 15, App. 5 D. M. & G. 510.

DESCENT OF REAL ESTATE.

TABLE SHOWING THE DESCENT OF REAL ESTATE UNDER INTESTACY.

N.B.—In each case it is supposed there are no nearer relations than those named.

If the Intestate die, leaving	His Representatives take in the proportion following.
Wife and no relations	* One-third to wife for life, rest to the Crown if the deceased had the legal estate. (Copyholds to the lord of the manor).
Wife and father	One-third to wife for life, rest to father if the deceased had acquired the fee by purchase and not by descent.
Wife and mother	One-third to wife for life, rest to mother in default of any heirs on father's side.
Wife, father, brothers, and sisters	One-third to wife for life, rest to father if the deceased had acquired the fee by purchase and not by descent. If by descent to brother.
Wife, mother, brothers, and sisters, whether by whole or half blood.	One-third to wife for life, rest to eldest brother by whole blood.
Wife, mother, nephews, and nieces (children of deceased brother).	One-third to wife for life, rest to nephew (eldest son of brother) or nieces (daughters of deceased brother if he left no son).
Wife, brothers, and sisters	One-third to wife for life, rest to eldest brother.
Wife, sons, and daughters	One-third to wife for life, rest to eldest son.
Wife and daughter	One-third to wife for life, rest to daughter.
Wife and daughters..	One-third to wife for life, rest equally between daughters.
Wife and grandchildren (sons of deceased son).	One-third to wife for life, rest to eldest grandchild.
Husband (where there has been issue born alive capable of inheriting the realty).	† All for life, afterwards to heir-at-law.
Husband (where there has not been issue born alive capable of inheriting the realty).	To heir-at-law.
Husband, sons, and daughters	All to husband for life, afterwards to eldest son.
Husband and child (son or daughter) ..	All to husband for life, afterwards to child.
Husband and daughters	All to husband for life, afterwards to daughters equally.
Husband and grandchildren (daughters of deceased son or daughter).	All to husband for life, afterwards to grandchildren equally.
Sons and daughters, whether by one or more wife or wives, and whether or not posthumous.	All to eldest son.
One child, either son or daughter	All.
Daughters	Equally divided.

* The wife is only entitled to one-third of the rents as her dower, but in many cases this is barred, and she then takes no interest in the real estate.

† The husband's life interest applies only to real estate in possession.

DESCENT OF REAL ESTATE—*continued.*

If the Intestate die, leaving	His Representatives take in the proportion following.
(Eldest) son and grandchild (son or daughter of younger son).	All to eldest son.
(Younger) son and grandchild (son or daughter of eldest son).	All to grandchild.
Eldest son, sons, and daughters, and grandchildren.	All to eldest son.
Daughters and grandchild (son or daughter of deceased son).	All to grandchild.
Daughters and granddaughters (children of deceased son).	All to granddaughters.
Daughters and grandchildren (sons and daughters of deceased daughter).	Equally between daughters and eldest son of deceased daughter.
Grandchildren (sons and daughters of two sons and a daughter).	All to grandson, eldest son of eldest son.
Grandchildren (daughters of a son and sons of a daughter).	All to granddaughters equally.
Grandchildren (sons and daughters of a daughter, and daughters of another daughter).	Half to eldest son of daughter, and half equally between daughters of other daughter.
Deceased son's widow and child	All to child.
Grandchild and great-grandchild, elder branch.	Great-grandchild.
Father and mother, and brothers and sisters.	All to father, if the deceased had acquired the fee by purchase and not by descent.
Mother, and brothers, and sisters	All to eldest brother.
Mother and sister	All to sister.
Mother only	All (in default of any heirs on father's side).
Sisters and nephews and nieces (children of deceased brother).	All to nephew, eldest son of deceased brother.
Sisters and nieces (children of deceased brother).	All to nieces equally.
Sisters and nephews and nieces (children of deceased sister).	Equally between sisters and nephew, eldest son of deceased sister.
Sisters and nieces (children of deceased sister).	Equally, but nieces take *per stirpes*.
Brother or sister of whole blood, and brother or sister of half blood on father's side, and brother or sister of half blood on mother's side.	All to brother or sister of whole blood.
Brother or sister of the half blood on father's side, and distant cousin on father's side.	All to half-brother or sister.
Brother or sister of half blood on mother's side, and distant cousin on father's side.	All to distant cousin on father's side.
Brothers and sisters, and grandfather or grandmother.	All to eldest brother.
Nephews and nieces by deceased brother, and nephews and nieces by deceased sister.	All to eldest nephew (son of deceased brother).
Niece by deceased brother, and nephews and nieces by deceased sister.	All to niece (daughter of deceased brother).
Nieces by deceased brother, and nephews and nieces by deceased sister.	All to nieces (daughters of deceased brother).
Nephews and nieces by one deceased sister, and nieces by another deceased sister.	Half to eldest nephew by one deceased sister, and half equally between nieces by other deceased sister.
Nephew (son of deceased sister) and great-niece, granddaughter of deceased brother.	All to great-niece.

DESCENT OF REAL ESTATE—*continued.*

If the Intestate die, leaving	His Representatives take in the proportion following.
Niece (brother or sister's daughter) and great-nephew (eldest brother's grandson).	All to great-nephew, eldest brother's grandson.
Father's father or mother, and mother's father or mother.	All to father's father or mother.
Grandfather, great-grandfather, uncle and aunt on father's side, and grandfather, uncle, and aunt on mother's side.	All to grandfather on father's side.
Grandfather on mother's side, and uncle or aunt on father's side.	All to uncle or aunt.
Grandmother, uncle, or aunt (all on same side).	All to uncle or aunt.
Grandmother on father's side and uncle or aunt on mother's side.	All to grandmother.
Great-grandfather, uncles and aunts on father's side.	All to eldest uncle.
Uncles and aunts on mother's side, and nephews (sons of deceased sister), and nieces (daughters of a deceased brother).	Equally between nieces, daughters of deceased brother.
Uncles and aunts on father's side, and uncles and aunts on mother's side.	All to eldest uncle, on father's side.
Aunts on father's side, and uncles or aunts on mother's side.	All equally to aunts on father's side.
Cousins	The eldest son of the deceased father's eldest brother (or according to heirship, as the case may be).
Uncle on mother's side and cousin (son of another uncle on father's side).	All to cousin.
No relations	All to the Crown. (Copyholds would go to the lord of the manor.)

The above table to successions to real property does not extend to the decease of any person dying before January 1, 1834, nor to gavelkind lands, nor to land held on borough English custom, nor to copyholds, nor to estates tail.

DETERMINABLE CHARGES on real estate, cesser of. See "Cesser."

DEVISE.

1. **Devise to A. and his heirs of real estate charged with testator's debts.**
   This is a devise for a particular purpose, but not for that purpose alone, and A. takes the beneficial interest subject to the particular purpose.
   Devise upon trust to pay testator's debts.
   Here the devise is for a particular purpose and that only, and the devisee takes no beneficial interest.
   Devise to A. (heir-at-law).
   A. takes as purchaser (3 & 4 Will. 4, c. 106).
2. Devise of land is specific, although residuary real estate (*Hensman* v. *Fryer*, L. R. 3 Ch. 420; *Lancefield* v. *Iggulden*, 10 Ch. 136).
3. *What may be devised.*
   All real estate comprising customary freeholds and copyholds without surrender and before admittance.
   Estates *pur autre vie*, whether there shall or shall not be any special occupant thereof, and whether the same shall be freehold, customary freehold, tenant right, customary or copyhold, or of any other tenure.

DEVISE—*continued.*

But lands liable to escheat by reason of the testator dying without heirs is not within s. 3 of the Wills Act, and must be executed in conformity with the provisions of the Statute of Frauds.

Entailed property, and property held in joint tenancy, cannot be devised.

DEVOLUTION.

I. Of (*a*) Personal Estate.
(*b*) Real Estate.
See "Descent" (*supra*).

II. **Successions by devolution.**

Where the succession is by "disposition" the settlor is the predecessor, and where by devolution the **last possessor** is the predecessor. [The same rule applies to estates tail.]

Where, however, the successor is called *nominatim* he is held to take by disposition from the maker of the entail (*Lord Saltoun* v. *Advocate-General*, *infra*).

The successor, who comes in as the first of a new series of heirs under a substitutive limitation to his ancestor and the heirs male of his body also takes by disposition from the maker of the entail (see *Earl of Breadalbane* v. *Lord-Advocate*, 8 Sco. Sess. Ca. 3rd Ser. 835; and *Lord-Advocate* v. *Drummond*, 40 Sco. Jur. 21).

A person, however, who succeeds as one of a class of heirs to another of the same class, takes by devolution from his immediate ancestor (*Lord-Advocate* v. *Gordon* (*infra*); *Lord-Advocate* v. *Earl of Zetland*, 4 Sco. Sess. Ca. 4th Ser. 199.

A. settles real estate on her son B. and the heirs of his body, whom failing, on D. (eldest son of C., second son of A.) and the heirs of his body, with limitations over. B. dies in August, 1883, without issue. *Held*, that A. was the predecessor, and that duty was payable by D. at the rate of 1 per cent. (*Lord Saltoun* v. *Advocate-General*, 21 Sco. Sess. Ca. 2nd Ser. 124, 3 Macq. Ho. Lds. Cas. 659).

A. settled certain real estate upon his eldest son B. and his heirs, whom failing, to C. and "the heirs male of her body, which failing, the heirs whatsoever of her body."

Under this limitation the estate devolved upon D., grandson of C., from whom it descended successively to E., F., and G., the son, grandson and great-grandson of D., the last possessor. G. died in 1866, whereupon the estate devolved to H., the uncle of G., as the next heir male of the body of C.

H. took a succession on G.'s death derived from G. as predecessor (*Lord-Advocate* v. *Gordon*, 10 Sco. Sess. Ca. 3rd Ser. 1015).

A. settles real estate upon B. for life, remainder to the heirs male of his body.

C. (son of B.) succeeded, then D. (grandson of B.), then F. (son of E., a brother of D.). F. was held to take a succession on D.'s death, derived from D. as predecessor (*Earl of Zetland* v. *Lord-Advocate*, 3 App. Cas. 505).

Examples.

1. Real estate devolving by death of A. (purchaser (*a*)), to his heir-at-law, B. B. derives his succession from A. under his intestacy.

(*a*) One who acquires land otherwise than by descent.

DEVOLUTION—*continued.*

As to customary heir, see "Gavelkind;" "Borough English."

2. Where B. in turn dies intestate leaving C. his heir-at-law, then although it is necessary for C. to make out his title by showing he is heir to A. (the last purchaser), yet for the purpose of the Succession Duty Act he is held to derive his succession from B., the last possessor (*Lord Saltoun* v. *Advocate-General, supra*).

This rule applies also to estates tail.

3. For example, A. (tenant-in-tail) dies; B., eldest son of A., succeeds and dies, and is in turn succeeded by C. (brother of B.), the next heir male.

C., though he must trace his descent from A., derives his interest from B., the last possessor.

4. A. devises realty to B. for life, remainder to C. and the heirs of his body.

C. predeceases B., and leaves a son D., D. being the first tenant-in-tail in possession is held to derive his interest from A., the maker of the entail.

5. A. devises real estate to B. for life.

Remainder to the heirs male of his body (C. eldest son). C. leaves two sons, D., E., who each die without issue male.

Remainder, in default thereof, to F. for life.

Remainder to the heirs male of his body. (F. leaves two sons, G., who dies without issue male, and H.)

B. (as called *nominatim*), C., G., and H., as each being the head of a fresh stirps, and F. (as called *nominatim*), derive their interest from A. (testator), D. derives from C., the last possessor, and E. from D. for the same reason.

DIFFERENT PERSONS IN SUCCESSION, GIFTS TO.

I. **Legacy Duty.**

How duty on legacies enjoyed by persons in succession or having partial interests therein is to be charged.

1. If the different persons in succession are ALL liable to the **same rate** of duty, the duty to be payable on the capital, as in the case of a legacy to one person.
2. If to **different rates** of duty, then as regards those entitled for life only, or any other temporary interest, as if the annual produce of the bequest had been given by way of annuity; the remainderman, on becoming absolutely entitled, being charged with duty as if the bequest had come to him immediately on the death of the testator (36 Geo. 3, c. 52, s. 12).

By whom duty payable in such cases.

1. By the executor, and the duty to be deducted from the capital.
2. The several duties in succession are payable by the executor, in the same manner as in the case of an immediate bequest, unless the property bequeathed shall have been paid to, or otherwise satisfied to or vested in any trustees, who (or their representatives) in such case shall be chargeable (*a*) (s. 13).

Plate, furniture, or other things not yielding any income, and given to different persons in succession, not to be liable to duty till in possession of persons having power to dispose thereof, or until sold (s. 14).

If the property shall be actually sold or disposed of, duty will be chargeable

(*a*) See *In re Jones' Trusts*, 21 L. J. N. S. Ch. 566.

DIFFERENT PERSONS IN SUCCESSION, GIFTS TO—*continued.*

as if originally given absolutely; therefore, where a tenant-for-life sells and appropriates the proceeds, he renders himself liable for the duty which is recoverable as a debt from his estate in the event of his death before discharging the same.

Note doctrine of *Howe* v. *Lord Dartmouth* (7 Ves. 137), that, as a general rule, a trustee must sell perishable or wasting property so that *cestuis que trustent*, whose interests are deferred, may participate in the trust property as well as those whose interests are immediate. The intention of testator, however, is to prevail where ascertainable; for example, he may show that he contemplates the specific enjoyment by the tenant-for-life, see "Conversion."

Duty on legacies so given that different persons shall become entitled thereto in succession, to be charged as given to be enjoyed in succession, whether taken under wills or by intestacy (s. 15).

For example, where a legacy is given to A. for life, and the residue being undisposed of devolves to the next-of-kin, who are liable to the same rate of duty as A., duty is payable as in the case of an absolute legacy (cf. s. 12).

See further, "Annuity." See also "Joint Tenancy."

How **duty on legacies subject to power of appointment** to be charged:—

Where subjected to a limited power of appointment, the legacy is chargeable with duty as a legacy given to different persons in succession.

Where subjected to a general and absolute power of appointment, the donee of the power taking also a limited interest in the legacy under the will, then

If the donee does NOT take in default of appointment the legacy is on the execution of the power to be charged with the same duty as if it had been given immediately to the donee, allowance being made for any duty already paid in respect thereof.

If the donee takes in default of appointment the duty is chargeable as if it had been given absolutely to him in the first instance (s. 18).

Examples.

BEQUEST TO A. FOR LIFE AND ON HIS DEATH—

(*a*) To the children of B. as A. shall appoint.

(*b*) As A. shall appoint, and in default of appointment to C.

(*c*) As A. shall appoint, and in default of appointment to himself (A).

In case (*a*) the bequest is chargeable with duty as a bequest to different persons in succession (ss. 18 & 12 of 36 Geo. 3, c. 52), so that if A. and the children of B. are liable to the same rate of duty, duty will be payable on the bequest as "in the case of a legacy to one person."

In case (*b*), where A. and C. are liable to different rates of duty, duty is payable in the first instance on the value of A.'s life interest, and upon A.'s executing the power, duty is then payable upon the bequest as if immediately given to A., allowance being, however, made for any duty previously paid in respect of such life interest.

In case (*c*) duty is payable as if the bequest was an absolute one in the first instance without such power of appointment (s. 18).

II. **Succession Duty** (16 & 17 Vict. c. 51).

1. Realty settled to use of A. (*ob.* 1889) for life, remainder to B. for life (*ob.* 1890), remainder as B. shall appoint.

All the instalments of duty are payable by B. (where liable), as he is

DIFFERENT PERSONS IN SUCCESSION, GIFTS TO—*continued.*

"competent to dispose by will of a continuing interest in" such realty (s. 21); and where B. dies after Aug. 1, 1894, Succession Duty is payable on the principal value (Finance Act, 1894, s. 18).

2. Personalty settled upon trust for C. (*ob.* 1887) for life, remainder to D. for life (*ob.* 1889); remainder as D. shall appoint (appoints by will); gift over in default.

Succession Duty is first payable on the value of D.'s life-interest, then on the whole fund, when appointed, allowance being made for duty already paid (ss. 21 & 33).

Where in the above case the gift over in default of appointment is to E., who is chargeable to the same rate of duty as D., duty is payable at once on C.'s death on the corpus of the fund (s. 32); and see s. 12 of 36 Geo. 3, c. 52 (*supra*).

Where duty is so paid at once, and D. dies after Aug. 1, 1894, see s. 21 of Finance Act, 1896, as to allowance made (if parties are lineals) against the Estate Duty payable on D.'s death. See also "Deductions."

DILAPIDATIONS.

An action will lie against the representatives of a deceased incumbent for dilapidations at the suit of his successor.

The amount payable is regulated by the provisions of the Ecclesiastical Dilapidations Act, 1871 (34 & 35 Vict. c. 43, ss. 29–36).

The sum stated in the Bishop's order, based on the report of the diocesan surveyor, is a debt due from such representatives to the new incumbent.

The incumbent is bound to maintain the parsonage and buildings and the chancel of the church in good repair, but not to maintain anything in the nature of ornament.

DIRECTION.

1. To pay debts, general, see "Debts."
2. To pay legacies free of duty, see "Free of Duty."
3. To sell, see "Conversion."

DISCHARGE OF EXECUTOR, etc., on distribution of fund, see "Certificate."

DISCLAIMER.

1. An heir-at-law cannot disclaim, see "Heir-at-law."
2. Where a person entitled to a legacy afterwards bequeaths it, his executors cannot avoid their liability to duty by disclaiming the bequest (*Attorney-General* v. *Munby*, 3 Hurl. & N. 826).
3. Where a person is entitled under the will of the appointor to a legacy, and also (in default of appointment) under the will of the donor of the power, he, the person entitled, cannot disclaim the legacy under the former will, and elect to take under the latter will (*Attorney-General* v. *Brackenbury*, 1 H. & C. 782).
4. The donee of a power may, by deed, disclaim the power. Conveyancing Act, 1882, s. 6.
5. Where an executor has taken probate of the will, he cannot disclaim the trusts of personal property bequeathed to him *quâ* trustee.

DISCOUNT.

1. Discount is allowed where duty is payable by instalments (*q.v.*) and is tendered in advance (16 & 17 Vict. c. 51, s. 40). This provision as to Succession Duty is applied in practice to Legacy Duty.

DISCOUNT—*continued.*

2. Discount is not allowed in the case of charitable successions (s. 16 of 16 & 17 Vict. c. 51), nor in the case of a bequest of a legacy to purchase an annuity (s. 10 of 36 Geo. 3, c. 52).
3. The payment of Duty in advance under discount does not prejudice the parties in their right to the repayment of overpaid duty (s. 40, *supra*).

As to return of overpaid duty, see "Rectification of Duty."

Discount is also allowed under the above section (s. 40) where a successor elects to pay by instalments under the provisions of s. 22 of 51 Vict. c. 8.

By Treasury Letter, Aug. 12, 1896 (see power vested in Treasury by s. 40), the rate of discount on Succession Duty tendered in advance is **altered from 4 per cent. to 3 per cent.**; and this rate is now, by analogy, applied also to discount on Legacy Duty.

Where the successor, under the Finance Act, 1894, pays on the principal value under the provisions of s. 18 no discount is allowed after twelve months have elapsed since the successor became entitled in possession.

No discount, moreover, is allowed where Estate Duty on real estate is paid before the expiration of twelve months from the death.

DISCRETIONARY POWER TO SELL. See "Conversion."

DISENTAILING DEED.

A deed (enrolled in Chancery within six months after execution) by which a tenant-in-tail in possession bars the entail and converts his estate into a fee simple. A tenant-in-tail in remainder bars the entail by the same means; but here to effect a complete bar of those in remainder the consent of the protector (generally the first tenant-for-life under the settlement) must be obtained. The protector's consent may be given either by the same deed as that which bars the entail, or by another deed executed and enrolled before, or at the same time, as the former deed.

There are certain estates tail which cannot be barred.

For example: (1) First estates tail, granted by the Crown as a reward for public services, so long as the reversion continues in the Crown; (2) Certain estates tail created by particular Acts of Parliament; and (3) A tenant-in-tail, after possibility of issue extinct, cannot bar the entail (3 & 4 Will. 4, c. 74, ss. 42–47).

Although the Settled Land Act (1882) gives a tenant-in-tail the powers of a tenant-for-life and, *inter alia*, a power to dispose of the fee simple of the land, yet the Act only applies to estates **in possession**, and not to the case of an expectant tenant-in-tail. Moreover, the powers conferred by the Act are to be exercised only for the purposes of the Act, which do not include the conversion of an estate tail into an estate in fee simple. Therefore disentailing deeds are still necessary.

As to who is predecessor for the purposes of Succession Duty where the tenant-in-tail disentails and resettles, see "Predecessor."

DISPOSITION.

Succession Duty.

Every past or future disposition of property, by reason whereof any person has, or shall become beneficially entitled to any property, or the income thereof, upon the death of any person dying after May 19, 1853, either immediately, or after any interval, either certainly, or contingently, and either originally, or

DISPOSITION—*continued.*

by way of substitutive limitation, confers a succession (s. 2 of 16 & 17 Vict. c. 51).

Conveyances or assignments by way of *bonâ fide* sale do not, however, confer successions.

Dispositions accompanied by the reservation of a benefit to the grantor confer successions (s. 7); also dispositions taking effect at a period depending on death, or made for evading duty (s. 8).

Dispositions of moneys payable under policies of assurance confer successions (s. 17).

Dispositions conferring successions are considered to emanate from the last absolute owner.

Estate Duty.

A disposition taking effect out of the interest of the deceased person shall be deemed to have been made by him, whether the concurrence of any other person was or was not required (Finance Act, 1894, s. 22 (2 *b*)).

The word "disposition" is taken to signify every act or obligation whereby one person confers on another any beneficial interest in property or the income thereof (*Attorney-General* v. *Montefiore*, 21 Q. B. D. 461): subject to the exemption of property passing by reason of a *bonâ fide* purchase (see Hanson's Death Duties, 4th ed. 117).

As to the meaning of disposition "taking effect upon the death of a person," see Hanson, 4th ed. 594.

Estate Duty shall not be payable on the death of a deceased person in respect of personal property settled by a **will or disposition** made by a person dying before the commencement of this part of this Act, in respect of which property any duty mentioned in paragraphs one and two of the First Schedule to this Act, or the duty payable on any representation or inventory under any Act in force before the Customs and Inland Revenue Act, 1881, has been paid or is payable, unless in either case the deceased was at the time of his death, or at any time since the **will or disposition** took effect had been, competent to dispose of the property (Finance Act, 1894, s. 21 (1)). See "Dodington Case."

Examples.

1. A. (*ob.* 1892) settled, by will, £5000 upon trust for B. for life, and after his death for C. absolutely. Where B. dies after Aug. 1, 1894, no Estate Duty is payable on his death, Probate Duty having been paid on the fund.
2. A. (*ob.* 1892) settled, by will, £5000 upon B. for life, and subject thereto as he (B.) shall by deed or will appoint. Estate Duty is payable on B.'s death, because B. was "competent to dispose."
3. Estate Duty is also payable where B. releases the power, or exercises it and resettles the property, retaining merely a life interest in the fund. For here B. "had been" competent to dispose.
4. Where the fund had been settled on similar trusts to (1) by a voluntary settlement made before Aug. 2. 1894, and Account Duty had been paid on the death of the settlor, no Estate Duty would be payable on B.'s death.
5. Where foreign personalty was settled by the will of A. (*ob.* 1892) upon trust for B. for life, Estate Duty would be payable on B.'s death, as Probate Duty was never payable on foreign personalty.

DISTINCT LEGACIES.

"Where any legatee shall take two or more **distinct legacies** or benefits under any will or testamentary instrument, which shall together be of the amount or

DISTINCT LEGACIES—*continued.*

value of £20, each shall be charged with duty, though each or either may be separately under that amount or value" (55 Geo. 3, c. 184, sch., Part III.).

Thus a bequest to A. of a ring (value £10) and a pecuniary legacy of £9 (total £19) would by this provision be exempt from Legacy Duty; but where the testator died on or after June 1, 1881, the pecuniary legacy would be liable (s. 42 of 44 Vict. c. 12), although the ring would still be exempt.

DISTRIBUTION, STATUTES OF.

22 & 23 Car. 2, c. 10, as explained by 29 Car. 2, c. 3, provides for the distribution of the effects of a deceased intestate (except of *femes covert*, the administration and enjoyment of whose estates belonged at common law to their husbands) amongst his next-of-kin in certain proportions after his debts and funeral and testamentary expenses have been paid, see "Descent."

As to provisions of Intestates' Estates Act, 1890 (53 & 54 Vict. c. 29), where a man dies intestate after Sept. 1, 1890, leaving a widow and no issue, see "Widow."

DIVIDENDS.

Dividends to the date of death (for Estate Duty), and to the date of the affidavit leading to the grant of probate or administration (for Probate Duty) should be included in the Account No. 1 annexed thereto (*Partington* v. *Attorney-General*, L. R. 4 Eng. & Ir. Ho. Lds. 100); the same principle applies to Account Stamp Duty (Form C), which is analogous to the Probate Duty. Interest at the rate of 3 per cent. from the death is charged (in lieu of dividends and other accretions accrued since the death) where the deceased died after Aug. 1, 1894, and where Estate Duty is payable.

The whole of the dividends of government stock and the like should be included where the stocks have been quoted "ex div.;" where, however, they have been quoted "cum div.," inasmuch as such quotations take into account accruing dividends, apportionments thereof need not be included in the Account No. 1.

Dividends to date of legacy account (Forms No. 1 and No. 3), in respect of legacies and residues (*Thomas* v. *Montgomery*, 3 Russ. 502; *Attorney-General* v. *Cavendish*, Wightw. 82); and to date of succession account (Form No. 4), in respect of settled personalty, should also be accounted for; but see "Accretions."

As to apportionment of dividends, see "Apportionment."

Dividends declared before the death of a tenant-for-life belong to his representatives, though not paid till after his death (*Wright* v. *Tuckett*, 1 J. & H. 266).

Dividends on shares in a company earned during the lifetime of a tenant-for-life, but not declared till after his death, go to the remainderman (*Mackinley* v. *Bates*, 31 B. 280).

The estate of a tenant-for-life of certain stocks, sold after his death "cum div.," is not entitled under the Apportionment Act, 1870, to any part of the purchase-money, although the dividend was partly earned during his life (*Bulkeley* v. *Stephens* (1896), 2 Ch. 241). But see "Apportionment."

DIVORCE.

1. Gift to "my wife A." A., after date of will, obtains a divorce on the ground of nullity. Gift held effectual (*In re Boddington*, 22 C. D. 597, 25 C. D. 685).
2. Gift to A. and B. (husband and wife) for their joint lives. As to effect of a divorce thereupon, see *Knox* v. *Wells*, 2 H. & M. 674.

DIVORCE—*continued.*

3. A. and B. (husband and wife) hold as tenants by entireties. They become joint tenants after a decree absolute for divorce (*Thornley* v. *Thornley*, (1893) 2 Ch. 229).

DOCUMENTS.

S. 49 of the Succession Duty Act (16 & 17 Vict. c. 51) enacts that "every person who, under the provisions of this Act, may deliver any account or estimate of the property comprised in any succession shall, if required by the Commissioners, produce before them such books and documents in the custody or control of such person, so far as the same relate to such account or estimate, as may be capable of affording any necessary information for the purpose of ascertaining such property, and the duty payable thereon; but all such information shall be deemed to be confidential, and the Commissioners shall not disclose the same, or the contents of any document or book, to any person, otherwise than for the purposes of this Act."

S. 37 of 44 Vict. c. 12, enacts that "it shall be lawful for the Commissioners of Inland Revenue at any time and from time to time within three years after the grant of probate or letters of administration or recording of inventory, as they may think necessary, to require the person acting in the administration of the estates and effects of any deceased person, to furnish such explanations, and to produce such documentary or other evidence respecting the contents of or particulars verified by the affidavit or inventory, as the case may seem to them to require."

It was not until the passing of the Succession Duty Act, 1853, that, except in isolated cases, the production of marriage settlements and other deeds was required. No direct request for such production was, however, made unless and until the account of the succession was submitted for examination and assessment in conformity with the provisions of s. 45 of the Act. Experience having shown that in numerous cases the claims for Succession Duty had been overlooked by the accountable parties, a direct request was made for the production of the deed or marriage settlement in all cases where notice of its existence had been given, leaving to the accountable parties and their solicitors the onus of the responsibility of declining to accede to the request.

For example, it frequently happened (and cases of the kind are still occurring), that, where, on the treaty for a marriage, the parents of the intended husband and wife settled property, and either the husband or wife died, it was thought that there was no immediate taxable succession, the wife or husband, as the case might be, being regarded as the "predecessor," and the survivor of them as not liable to duty. Then, after a lapse of years, the survivor of the wife and husband died. Accounts were submitted, and it was found for the first time that the taxable succession arose at the first death—that a large sum for interest on duty was due, a result which would have been avoided had the deed or settlement been produced at the time of the first death.

In 1881, the new Account Stamp Duty was introduced (44 Vict. c. 12, s. 38), and the inquiries to enable the authorities to warn the accountable parties necessarily become more searching, and further experience has abundantly shown that nothing short of a general invitation to send up all deeds and settlements under which the deceased was interested was likely to effect the purpose in view, viz.:—on the part of the authorities to give notice as early as possible of all claims for duty, and to enable solicitors to advise their clients as

DOCUMENTS—*continued.*

soon as possible of their liabilities, and to assist themselves and the authorities in so doing by supplying all the desired documents and information. The Act of 1889 (52 Vict. c. 7) imposed another new Death Duty—the "Temporary Estate Duty," and extended materially the operation of the Account Stamp Duty. It gives also protection to purchasers and mortgagees under certain circumstances, which practically involves the production of deeds as part of the notice, whereas in former times only that part of a deed or settlement was abstracted which gave rise to an immediate claim for duty; the whole settlement is now abstracted, and an official notice is attached that a second or subsequent transmission of the deed need not as a rule be made.

And see Finance Act, 1894, s. 8 (14), as to "production of books and documents" for Estate Duty purposes.

DODINGTON CASE.

By a marriage settlement the intended wife's fund was settled thus:—

In trust for herself for life (*ob.* Aug. 10, 1883);

Then for her intended husband for life (*ob.* Aug. 28, 1894);

Then (on the death of the survivor) for such persons as the intended wife should at any time by deed or will appoint.

The intended wife exercised the said power by will in favour of certain beneficiaries, and Probate Duty was paid on her personal estate, including the value of her reversionary interest in the settled fund (that is the value of the trust funds less the value of her husband's life interest therein). When the husband died (after the Finance Act, 1894) Estate Duty was claimed on the whole of the trust funds; but it was held that the settlement and the will might be looked at together as a "disposition," and therefore the trust funds appointed by the will were property "settled by a will or disposition" made by the wife, and were exempted from Estate Duty in so far as Probate Duty had been paid upon them (s. 21 (1) Finance Act, 1894) (76 L. T. 557; affirmed by the Court of Appeal, 77 L. T. 299).

In practice the scope of this exemption is extended, and no claim is now made for Estate Duty under s. 2 (1 *b*) on the death, after Aug. 1, 1894, of a tenant-for-life of personal property, under a settlement thereof, in respect of which (and, seemingly, to the extent to which) Probate Duty has been paid or is payable, under the will or intestacy of a person, who predeceased the tenant-for-life, entitled at his (reversioner's) death to a vested interest therein; whether such a person had a general power of appointment over the property, or was entitled to it absolutely; whether he was entitled to it originally or derivatively; and whether he was himself the settlor of the property or not.

DOMICILE.

The domicile of any person is, in general, the place or country which is in fact his permanent home (*a*), but is in some cases the place or country which,

(*a*) The "home" of a person being defined as "that place or country in which either he resides, with the intention of residence (*animus manendi*), or in which having so resided, he continues actually to reside, though no longer retaining the intention of residence (*animus manendi*), or with regard to which, having so resided there, he retains the intention of residence (*animus manendi*), though he in fact no longer resides there.

For example:—

1. A. resides in England, having no intention of leaving the country for good or of settling elsewhere. England is A.'s home.

2. A., an inhabitant of England, who has hitherto intended to continue residing there

DOMICILE—*continued.*

whether it be in fact his home or not, is determined to be his home by a rule of law.

According to English law every independent person has at any given moment a domicile, and this domicile is either (1), the domicile received by him at (or as from) his birth, which is called his *domicile of origin*, and which is retained until the acquisition of a domicile of choice; or (2), the domicile not being the same as his domicile of origin, which has been acquired by him, while independent, by his own act by the choice of a residence in a country, other than his country of origin, with the intention (*animus manendi*) of a permanent or indefinite residence there (*a*). This domicile is called a *domicile of choice*, which is retained until the acquisition of a new domicile of choice or the resumption of the domicile of origin (*b*); (*see* Dicey's "Conflict of Laws").

Domicile of particular classes of persons.

1. *Dependent persons.*

Infants:—The domicile of a legitimate or legitimated unmarried minor follows

makes up his mind to settle in France. His home, however, continues to be English till the moment when he leaves the country.

3. A., an inhabitant of England, has for years intended to live permanently in England. He goes to France for business or pleasure with the intention of returning to England, and residing there permanently. England is still A.'s home, for the intention of residence (*animus manendi*) is retained (Dicey's "Conflict of Laws," p. 81).

Where a person has more than one residence, the place where he usually resides with his wife and family will probably be considered his place of domicile (*Forbes* v. *Forbes*, Kay, 341).

(*a*) The intention must amount to a purpose or choice, that is the residence in the particular country must not be prescribed or dictated by any external necessity.

The intention must be to leave the place where the party has acquired a domicile, and to go to reside permanently or for an indefinite period in some other place as the new place of domicile.

The intention need not be an intention to change allegiance (*Udney* v. *Udney*, L. R. 1 Sc. App. 441).

(*b*) In order to lose the domicile of choice once acquired, and to revive the domicile of origin, it is not only necessary that the person should form an intention to leave his domicile of choice, but he must have left it with the intention of leaving it permanently (*Chalmers* v. *Wingfield*, C. A. 344; 36 Ch. D. 400).

The rules of law that every person retains his domicile of origin until another domicile is acquired, and resumes it whenever an acquired domicile is simply abandoned, are simply conventional rules of law resorted to in order to maintain the general principle that no person can be without a domicile.

"It is a settled principle that no man shall be without a domicile, and to secure this result the law attributes to each individual, as soon as he is born, the domicile of his father if the child be legitimate, and the domicile of the mother if illegitimate. This has been called the domicile of origin and is involuntary: other domiciles, including domiciles by operation of law, as a marriage, are domiciles of choice, for, as soon as any individual is *sui juris*, it is competent for him to elect and assume another domicile, the continuance of which depends on his will and act. Domicile of choice is a conclusion or inference which the law derives from the fact of a man fixing voluntarily his sole or chief residence in a particular place, with an intention of continuing to reside there for an unlimited time. This is a description of the circumstances which create or constitute a domicile, and not a definition of the term. There must be a residence freely chosen and not prescribed or dictated by any external necessity, such as the duties of office, the demands of creditors, or the relief from illness, and it must be residence fixed and not for a limited period or particular purpose, but general and indefinite in its future contemplation.

"The domicile of origin may be extinguished by act of law, as, for example, by sentence of death or exile for life, which puts an end to the *status civilis* of the criminal; but it cannot be destroyed by the will and act of the party.

"Domicile of choice as it is gained *animo et facto*, so it may be put an end to in the same manner. In Mr. Justice Story's 'Conflict of Laws' it is stated that the moment the foreign domicile (*i.e.* domicile of choice) is abandoned the native domicile of origin is reacquired" (*per* Lord Westbury in the case of *Udney* v. *Udney*, L. R. 1 Sco. App. 441, 457).

DOMICILE—*continued.*

that of his or her father, and the domicile of an unmarried minor born out of wedlock and not legitimated, probably follows (but where the child does not live with the mother, see *In re Beaumont* (1893), 3 Ch. 490) that of his or her mother, through all the changes of such respective domicile (*a*).

The domicile of a foundling is that of the country where born or found.

Married Women:—The domicile of a married woman is during coverture the same as and changes with that of her husband, unless judicially separated *a mensâ et thoro.*

A minor on attaining his majority and a married woman on becoming a widow retain their domiciles until they respectively change them. An infant widow would probably retain her domicile (that of her late husband) until she attained her majority or remarried.

2. *Independent persons.*

Convicts.—There appears to be no English decision as to whether persons transported for life lose their original domicile. Persons transported for years would appear to fall into the same category as prisoners who retain the domicile possessed at the commencement of their imprisonment.

French *émigrés* were treated by our Courts as retaining their domicile of origin (*In goods of Duchess D'Orleans*, 1 Sw. & Tr. 253).

Prisoners retain during imprisonment the domicile possessed at its commencement.

Lunatics apparently retain (under ordinary circumstances) the domicile possessed when first legally treated as insane.

Military and Naval Persons.—Soldiers and sailors in the service of their Sovereign retain the domicile they had on entering the service wherever they may be stationed (*In re Macreight*, 30 Ch. D. 165; *Ex parte Cunningham*, 13 Q. B. D. (C. A.) 425)).

Where persons enter the military or naval service of a foreign Sovereign, see Dicey, "Conflict of Laws," 148, 149.

Invalids.

(1) A. goes abroad for the sake of his health with the fixed intention of residing there for six months and no longer.

A foreign domicile is not acquired, there being no *animus manendi.*

(2) A., finding his health suffer from the English climate, goes to France, and settles there with a view of residing there permanently or indefinitely.

A French domicile is acquired (*Hoskins* v. *Matthews*, 8 De G. M. & G. 13).

(3) A. goes to France in a dying condition with a view to alleviate his sufferings, and without any expectation of returning to England.

Here as in (1) there is no *animus manendi*, and therefore no French domicile is acquired.

Officials.—As a rule official residence is not a fact from which a change of domicile can be inferred; but much depends on the nature of the office, where it is residence for a limited time or for a special purpose, as in the case of a Governor-General of India, the nature of the office rebuts any presumption in favour of the existence of the *animus manendi:* on the

(*a*) The domicile of a minor does not change with that of his parent, if the minor is married, or holds an office or employment in the service of Her Majesty, or has set up with the consent of the parent in any distinct business (Indian Succession Act, 1865).

DOMICILE—*continued.*

other hand such a presumption is strengthened when the office is such an one as an ecclesiastical cure.

Ambassador.—An ambassador at a foreign court generally retains his existing domicile which is, as a rule, the country he represents; but where before his appointment to a country as ambassador he is already domiciled there he retains his domicile notwithstanding his appointment (*Heath* v. *Samson*, 14 Beav. 441).

Consul, etc.—Residence in a foreign country in the performance of a public duty, such as that of a judge, military officer or consul, does not in itself confer a foreign domicile. A soldier or sailor in the service of his Sovereign retains, wherever he may be stationed, the domicile he had on entering the service.

Ecclesiastics.—A clergyman possessed of a cure, in view of the strong presumption of his intention to remain there permanently, is held to be domiciled at the place of his cure (Phillimore, s. 184).

Exiles and Refugees.—The bare fact of residence of a foreign exile in England does not give him an English domicile (*De Bonneval* v. *De Bonneval*, 1 Curt. 856).

Servant.—The domicile of a servant is a question of fact and intention. There is no authority in English law for the contention that his domicile is that of his master.

Anglo-Indian Domicile.—This kind of domicile was acquired by persons in the military or covenanted service of the East India Company. The decided cases on this kind of domicile, though not now of much practical importance, determine the domicile of persons living in India before 1858. See *Wauchope* v. *Wauchope*, Jan. 23, 1877, 4 R. 945.

There cannot be an Anglo-Chinese domicile (*In re Tootal's Trusts*, 23 Ch. D. 532).

See further, Dicey's "Conflict of Laws."

Domicile and the Death Duties.

Probate Duty.

This is an *ad valorem* stamp duty on the grant of probate or administration by virtue of which personal property (including equitably converted real estate) in this country belonging to the deceased (*wherever domiciled*), is realized and collected, and is payable only in respect of assets which are within the jurisdiction of the Court of Probate at the time when the right to the duty attaches.

This jurisdiction extends to moveables locally situate abroad (over which deceased had and exercised a general power of appointment) if vested in a British trustee.

But by 47 & 48 Vict. c. 62 (Revenue Act, 1884), s. 11, as amended by 52 & 53 Vict. c. 42 (Revenue Act, 1889), s. 19, where deceased dies domiciled out of the United Kingdom, moneys receivable under a policy of assurance effected by such deceased with any insurance company may be paid without the production of a grant of representation from a Court in the United Kingdom. In practice such moneys are held liable to Estate Duty; whether insured in an English company or in a foreign company having offices in England. And where the moneys pass to the personal representatives of the deceased they should be included in the account annexed to the original affidavit (Finance Act, 1894, s. 8 (3)).

DOMICILE—*continued.*

The liability to Estate Duty also attaches where the moneys pass to the gratuitous assignees or nominees of the deceased.

The provisions of s. 28 of 44 Vict. c. 12, by virtue of which a deduction of debts and funeral expenses may be taken in the first instance "from the value of the estate and effects as specified in the account delivered with or annexed to the affidavit, or whereof the inventory shall be exhibited," do not apply unless the deceased dies domiciled in this country.

Mortgage debts secured on leaseholds and life policies may, however, be deducted, although the deceased died domiciled abroad.

Foreign debts (which must be vouched) may be deducted in a corrective affidavit (Form D), where they are not covered by the foreign assets.

Legacy Duty.

(*a*) Where the deceased dies domiciled abroad his personal estate is not liable to Legacy Duty (**Forbes** *v.* **Jackson,** 2 Cro. & Jer. 382; **Attorney-General** *v.* **Jackson** (H. L.), 8 Bligh. 15; **Arnold** *v.* **Arnold,** 2 Mylne & Cr. 256; **Thomson** *v.* **Advocate-General,** 12 Cl. & Fin. 1; 13 Sim. 153). For "where a man is domiciled there the personal property is considered to be situate" (*per* Baron Alderson, 6 Ex. 222).

But see *infra* as to equitably converted immoveables.

(*b*) Where, however, the deceased dies domiciled in this country, Legacy Duty is payable on all his personal estate, including foreign investments (**Re Ewin,** 1 Cro. & Jer. 151; 1 Tyr. 92).

Where a foreign domicile is claimed the circumstances relied upon to establish such foreign domicile should be fully stated, and a short history of the deceased's life, commencing with the domicile of origin, should be given.

Succession Duty.

Real estate or chattels real, situate in this country, or the proceeds thereof or any gift charged upon or payable thereout, is liable to duty, although the deceased died domiciled abroad, for the liability of *immoveable* property depends upon its local situation and not upon the domicile of the owner.

And equitably converted immoveables are liable to Legacy Duty where the beneficial owner dies domiciled abroad before the actual conversion of the property.

Moveable property belonging to a person dying domiciled abroad is not chargeable with Succession Duty any more than with Legacy Duty, although actually situate in this country at the time of the owner's death (**Wallace v. Attorney-General,** L. R. 1 Ch. App. 1).

Succession Duty has, however, been held to be payable—

(*a*) Where such property is in this country, and the owner has disposed of the same by virtue of a general power of appointment.

A., domiciled abroad, succeeds (before May 19, 1853) to an absolute power of appointment over settled personalty, which power A. exercised by WILL after May 19, 1853. Here the appointees were held liable under s. 2 of the Succession Duty Act, and to take their title under the SETTLEMENT creating the power and not under the will. The case, however, would have fallen within s. 4 had the appointor (A.) succeeded to the power by a death after May 19, 1853 (**In re Lovelace's Trusts,** 4 De G. & Jo. 340).

A., domiciled abroad, succeeded (after May 19, 1853) to an absolute power of appointment over personalty paid into Court by the

DOMICILE—*continued.*

trustees under the Trustees Relief Acts under her father's will, which power she (A.) exercised by will in favour of B. (£3000) and C. (£1000).

Succession Duty was held to be payable, and the appointees, B. and C., were held to derive their succession from A. (**the donee** of the power) (**In re Wallop's Trusts,** 1 De G. Jo. & Sm. 656).

(*b*) Where the persons entitled are so entitled under an English trust or settlement, or in virtue of English law.

A., domiciled abroad, bequeathed a sum of consols to his widow, B. (*ob.* 1863), for life, with remainders over.

Succession Duty was held to be payable in respect of the trust fund, which, upon B.'s death, had been paid into Court (**In re Smith's Trusts,** 12 W. R. 933).

A. (a Belgian) by will, made in English form, and admitted to probate as such, bequeathed a sum of money to be invested in English consols, the dividends to be paid to B. for life, with remainder to his (A.'s) nephews and nieces.

Succession Duty was held to be payable on the fund on B.'s death (**In re Badart's Trusts,** L. R. 10 Eq. 288).

A. (domiciled in Portugal) made a will in English form and gave the residue of his property to his executors (three resident in London, one in Oporto) upon trust to sell and the proceeds to be invested in consols to meet certain annuities.

The fund was held liable to Succession Duty, upon the deaths of the annuitants.

Attorney-General *v.* **Campbell** (L. R. 5 Eng. & Ir. H. L. App. 524, reversing the same *sub-nomine Callanane* v. *Campbell,* 1871, L. R. 11 Eq. 378).

And where property (originally foreign) is settled by a foreign instrument, Succession Duty is payable where, on the death, the property is invested **in the names of trustees resident here** (*Attorney-General* v. *Felce,* 10 Times L. R. 337).

See also **Lyall** *v.* **Lyall** (L. R. 15 Eq. 1) (first point); where Succession Duty was held to be payable, although the funds on which the duty was claimed reached the hands of the English trustees after the date when the succession took place, the right to them having, however, been vested in the trustees previous to that date.

A. dies (Dec. 1869) domiciled in America. A portion of his estate is realized by his executors resident there and the proceeds remitted to trustees in England, and by them paid into Court. Succession Duty was held to be payable on the death of an annuitant under the will, in respect of the fund appropriated to meet the annuity (**Thompson** *v.* **Birch,** Weekly Notes, May 27, 1876).

See also *Duncan's Trustees* v. *McCracken* (15 Sco. Sess. Ca. 4th Ser. 628).

A testator (*ob.* April, 1853), domiciled at Sydney, directed his Australian executors to transmit his residuary estate to trustees in England for investment, in trust for his wife for life and then

DOMICILE—*continued.*

for his child. No part of the estate reached the hands of the trustees before the death of the tenant-for-life. *Held*, that no duty was payable (**Lyall** *v.* **Lyall,** L. R. 15 Eq. 1 (second point)).

In this case French rentes, shares in the Bank of France, were comprised in an English settlement, executed in England on the marriage of an English lady with a domiciled Italian, and vested in English trustees. On the succession of the children (domiciled abroad) on the death of their father in 1877, Succession Duty was held to be payable. "This is not real property, but personal property in the hands of English trustees, and you cannot get it from them except by an action in England," *per* Sir G. Jessel, M.R. (**In re Cigala's Settlement Trusts,** L. R. 7 Ch. D. 351).

See also *Lord-Advocate* v. *Gibson* (10 Sco. Sess. Ca. 4th Ser. 224).

Estate Duty.

Immoveable property situate out of the United Kingdom is not chargeable with Estate Duty (s. 2 (2), Finance Act, 1894).

Moveable property situate out of the United Kingdom is not chargeable with Estate Duty where the deceased was the owner and was **domiciled out** of the United Kingdom at the time of his death. It is chargeable where the deceased was the owner and was **domiciled in** the United Kingdom at the time of his death. It is also, speaking generally, chargeable where the deceased was only interested for life, and at his death the property formed the subject of a British trust or was vested in a British trustee (s. 2 (2)).

DONATIONS MORTIS CAUSÂ.

The Essentials of a Donatio Mortis Causâ (*a*).

1. The gift must be of PERSONAL property.
2. It must be in expectation of death (*Duffield* v. *Elwes*, 1 Bligh. N. S. 497), and on the condition (expressed or (*b*) **implied**) that the gift shall be absolute only in case of the donor's death, and shall therefore be revocable during his life (*Edwards* v. *Jones*, 1 M. & C. 233); recovery or resumption of possession by the donor will defeat the gift (*Ward* v. *Turner*, 1 L. C. 983).

   Where the gift appears to have been made during the illness of the donor and but a few days or weeks before his death the presumption will be that the donation was made in view of death and in the donor's last illness (*Gardiner* v. *Parker*, 3 Madd. 184; 1 Rop. Leg. 21, 3rd ed.).
3. The property must be actually or constructively delivered to the donee in the donor's lifetime.
4. The donor must die from the illness which affected him when the gift was made.

   "If a gift is made in expectation of death there is an implied condition that it is to be held only in the event of death" (*Gardiner* v. *Parker, supra*).

(*a*) As to Scotch donations *mortis causâ*, see Bell's "Principles of the Law of Scotland," 8th ed. vol. ii. p. 322, sec. 1874, and dictum of Lord McLaren in *Martin's Trustees* v. *Martin and Others* (24 Sco. L. R. 484).

(*b*) The law will infer from the fact that the gift was made during the donor's last illness that the gift was to be absolute only in case of the donor's death of that illness (1 Rop. Leg. 4, 3rd ed.). This presumption may of course be rebutted by evidence as to the circumstances of the gift (*Walter* v. *Hodge*, 2 Swanst. 92; *Edwards* v. *Jones*, *infra*).

DONATIONS MORTIS CAUSÂ—*continued.*

Delivery.

There must be an actual delivery of the thing to the donee himself (*Ward* v. *Turner*, 2 Ves. Sen. 431), or to some one else for the donee's use (*Drury* v. *Smith*, 1 P. Wms. 404), and the donor must part not only with the possession but the dominion (*Hawkins* v. *Blewitt*, 2 Esp. 663), though the gift may be saddled with a trust (*Blount* v. *Barrow*, 4 Bro. C. C. 75; *Hills* v. *Hills*, 8 M. & W. 401).

But there may be a delivery where the subject of the gift being already in the possession of the donee, *quâ* bailee, the character of the possession is changed by the direction of the donor (*Cain* v. *Moon*, 74 L. T. 728).

Where the donee himself is a servant or agent of the donor, a delivery to him as agent of the donor will not suffice (*Trimmer* v. *Danby*, 25 L. J. Ch. 424). A delivery of a symbol is not sufficient, but where the nature of the thing will not admit of a corporeal delivery, a delivery of the means of coming at the possession will suffice (*Jones* v. *Selby*, Prec. Chanc. 300). Where the subject of the gift is a chose in action, a delivery of some document essential to its recovery at law is sufficient (*Moore* v. *Darnton*, 4 De G. & Sm. 517).

As delivery is essential neither an imperfect testamentary bequest (*Mitchell* v. *Smith*, 12 W. R. 941) nor an ineffectual gift *inter vivos* (*Edwards* v. *Jones*, *supra*) will be supported as a good *donatio mortis causâ*.

In the case of *Duffield* v. *Elwes* or *Hicks* (1 Bl. N. S. 497) it was held by the House of Lords, reversing the decision of Sir J. Leach in *Duffield* v. *Elwes* (1 Sim. & St. 239), that the mere delivery of a mortgage deed might operate as a *donatio mortis causâ* of the mortgage debt.

In Scotland to constitute a good *donatio mortis causâ* the law is more strict as to the transfer of the subject-matter (*McNicol* v. *McDougal*, 17 Sco. Sess. Ca. 4th Ser. 25; and see *Martin's Trustees* v. *Martin*, 24 Sco. Law. Rep. 484).

Of what there may be a Donatio Mortis Causâ.

No rule can be laid down as to what species of property can be the subject of a *donatio mortis causâ*, but it has been decided that the following may be so given—

Bank notes (*Miller* v. *Miller*, 3 P. Wms. 356).

Chattels passing by delivery.

Bonds (*Snellgrove* v. *Baily*, 3 Atk. 214).

Promissory notes payable to bearer or to order, and, if to order, though not indorsed (*Veal* v. *Veal*, 27 Beav. 303; *Re Mead*, 15 Ch. D. 651).

Bills of exchange, payable to order or indorsed in blank.

Bills, notes, or cheques of a third person which are payable to bearer or order, and if to order although not indorsed (*Veal* v. *Veal*, *supra*; *Clement* v. *Cheeseman*, 27 Ch. D. 631; *Re Mead*, *supra*).

Bankers' deposit notes.

Policies of insurance, mortgage debts, exchequer notes.

But not—

South Sea annuities, railway stock (*Moore* v. *Moore*, L. R. 18 Eq. 474).

Promissory notes made by deceased in his last illness (*Tate* v. *Hilbert*, *infra*).

Title-deeds, except when belonging to the donor as security for money; for example, a mortgage debt (*Duffield* v. *Elwes*, 1 Bligh. N. S. 497).

Donor's own cheque, unless cashed or otherwise negotiated in his lifetime (*Hewett* v. *Kay*, L. R. 6 Eq. 198; *Rolls* v. *Pearce*, 5 C. D. 730) for it is the payment which constitutes the delivery; in this respect differing from the case of a

DONATIONS MORTIS CAUSÂ—*continued.*

bill, promissory note, bond, I.O.U., or cheque of a third person, in which case it is the delivery of the instrument itself which operates as a delivery of the money secured); but if donee presents the cheque after donor's death, and the bankers, in ignorance of the death, cash the cheque, the donee can retain the money (*Tate* v. *Hilbert*, 2 Ves. 120), and where presented before the death but the bankers refuse payment, being doubtful as to the drawer's signature, the donee can claim from the personal representatives on the donor's death (*Bromley* v. *Brunton*, L. R. 6 Eq. 275).

1. A *donatio mortis causâ* differs from a legacy, and resembles a gift *inter vivos* in these respects:—

   It takes effect *sub modo* from the delivery in the lifetime of the donor, and therefore cannot and need not be proved as a testamentary act.

   It requires no assent or other act on the part of the executor or administrator to perfect the title of the donee.

2. A *donatio mortis causâ* differs from a gift *inter vivos*, and resembles a legacy in these respects—

   It is revocable during the donor's lifetime.

   It may be, and always might be, made even at law to the wife of the donor (*Tate* v. *Leithead*, Kay. 658; and see Conveyancing Act, 1881, s. 50).

   It is liable to the debts of the donor on a deficiency of assets (*Smith* v. *Casen*, cited 1 P. W. 406).

   It is subject to Legacy Duty (8 & 9 Vict. c. 76).

   It is subject to Stamp Duty ("Account Stamp Duty") (44 Vict. c. 12, s. 38; Estate Duty, Finance Act, 1894, s. 2 (1 *c*)); so also is a gift *inter vivos* if made within twelve months of the death of the deceased (52 Vict. c. 7, s. 11 (1); Finance Act, 1894, s. 2 (1 *c*).

DOUBLE DEVOLUTION. See "Cumulative Duties."

DOUBLE DUTY.

Probate and Account Stamp Duty (penalty).

S. 40 of 44 Vict. c. 12, enacts that "If any person who ought to obtain probate or letters of administration, or deliver a further affidavit, or to exhibit an inventory, or who is required to deliver such account as aforesaid (s. 38), shall neglect to do so within the period prescribed by law for the purpose" he shall be liable to pay double the amount of duty chargeable.

See also "Cumulative Duties."

Temporary Estate Duty (penalty).

S. 8 (1) of 52 Vict. c. 7, enacts that "If any person who ought to deliver a statement as required by this part of this Act shall neglect to do so, he shall be liable to pay to Her Majesty double the amount of duty chargeable, and the same shall be a debt due from him to the Crown, and be recoverable by any of the ways or means now in force for the recovery of Probate, Legacy or Succession Duties.

Estate Duty.

Property passing on any death shall not be aggregated more than once, nor shall Estate Duty in respect thereof be more than once levied on the same death (Finance Act, 1894, s. 7 (10)).

DOUBLE PROBATE.

A double probate is exempt from Probate Duty (41 Geo. 3, c. 86, s. 3) and Estate Duty; see further "Free Duty Mark."

DOUBLE PROBATE—*continued.*

Where a testator appoints two (or more) executors, and probate is granted to one of them, power may be reserved to grant probate to the other (or others). When the other executor wishes to prove he takes what is called a double probate, and this may be done at any time during the life, or after the death of, the other executor.

The practice of obtaining double probate differs somewhat from that involved in the case of an ordinary probate. For example, the engrossment of the will to be annexed to the second probate is usually made at the Registry. This involves the attendance at the Registry of the executor to be sworn to the will and mark it there; or he may be sworn to the probate already granted and mark that.

Again, the oath and affidavit must be appropriately varied.

The double probate is stamped with a denoting stamp, on proof that the duty has already been paid, so that no further duty is payable.

See further Tristram and Coote's Probate Practice, 12th ed.

DOUBTFUL DEBT.

Moses v. *Crafter* (4 Car. & P. 524) is an authority for omitting desperate or doubtful debts in estimating the value for probate; but see dictum of Lord Wensleydale in *Attorney-General* v. *Brunning* (8 H. L. C. 262, 263).

DOWER

Is an estate for life of a wife in a third part of the freehold lands of inheritance of her husband of which he was solely seized, or entitled, and of which lands any issue she could have had might have inherited (*a*). It arises either at common law or under the Dower Act (3 & 4 Will. 4, c. 105).

By the Dower Act a widow's right to dower, if married after Jan. 1, 1834, only extends to lands of inheritance (legal or equitable) of which the husband died seized, possessed, or entitled.

Since this Act, however, any charge made by the husband, or any declaration by will or deed, will deprive the widow of her dower. In fact she can only claim it against the heir on intestacy.

Dower may also be barred by the wife's adultery, or by a divorce. It may also be released under the 3 & 4 Will. c. 74.

Jointure, as distinguished from dower, is an estate for the life of the wife to take effect in possession or profit immediately after her husband's death, and arises by the express contract of the parties, and in lieu of dower, which, however (*inter alia*), arises by operation of law.

The widow cannot claim both jointure and dower, and for jointure to be effectual in barring dower it must be made to take effect immediately after the husband's death; (*a*) must be at least for the life of the widow, and not *pur autre vie*, or for a term of years or other less estate; (*b*) must be made to the widow herself and to no other in trust for her; (*c*) must be made in satisfaction of her whole dower and not of any particular part of it; (*d*) must be made before marriage, or she may, upon her husband's death, elect whether she will take it or her

(*a*) A widow of a tenant-in-tail who died without issue would therefore be entitled to dower; not so, however, where her husband had been tenant-in-tail after possibility of issue extinct.

The dower of the widow in gavelkind lands consists of one moiety, and continues only so long as she remains unmarried and chaste.

DOWER—*continued.*

dower, for she was not capable of consenting to it during coverture (Tud. L. C. C.; 1 St. C.).

For the purposes of Succession Duty the heir-at-law can take a deduction in his succession account (Form No. 6) of the widow's dower. The cesser of such dower is liable on extinction to Succession Duty (16 & 17 Vict. c. 51, s. 5), and this although the capitalized value thereof is under £100 (c. 18), provided the original succession (of which the dower is part) was not under £100.

In cases coming within the operation of the Finance Act, s. 18, where the successor was "competent to dispose," Succession Duty would be payable, on cesser of the dower, on the fractional part (one-third) of the principal value attributable to the dower.

As to a legacy to a widow in lieu of dower, see "Widow."

Estates in dower, though liable to Estate Duty, s. 22 (3), are not in practice treated as "settled" within the meaning of ss. 16 (3), 22 (*h*, *i*) of the Finance Act, 1894.

The widow's charge of £500 under the Intestates' Estates Act, 1890, is paramount to her right to dower (*Re Charrière*, 74 L. T. 650).

DRAINAGE CHARGE.

Allowed as a deduction in Succession Account (Form No. 6), in estimating the value of a succession; but where terminable, a further claim for Succession Duty will arise on cesser of the charge (s. 5 of 16 & 17 Vict. c. 51).

DUTY FREE GIFTS. See "Free of Duty."

DUTY PAID STAMP. See "Free Mark."

E.

EFFECTS.

Gift of "effects" will not *primâ facie* pass Real Estate. The word following an enumeration of chattels personal will, as a rule, be restricted to things *ejusdem generis*. In these circumstances it has been held to include wine (*Bourne* v. *Brandreth*, 58 L. T. 537), but not jewellery (*Northey* v. *Paxton*, 60 L. T. 30) or banknotes.

Gift of "all other effects," following such an enumeration, may pass the residuary personal estate where there is no gift of residue (*In bonis Jupp* (1891) P. 300). See Theobald on Wills, 4th ed.

ELDEST SON

Means firstborn son in limitations of real estate devised for life with remainders in tail.

In a devise, therefore, to the eldest son of A. for life, with remainder to his first and other sons successively in tail, with remainder to the second and other sons of A. successively in tail, where A.'s firstborn son predeceases the testator without issue, the second son of A. will take an estate tail (*Meredith* v. *Treffry*, 12 Ch. D. 170).

Eldest son may mean only son (*Tuite* v. *Bermingham*, L. R. 7 H. L. 634).

But it will not, of course, have this meaning where the eldest son was dead at the date of testator's will, or where the testator contemplates a younger son as becoming eldest (*Hervey-Bathurst* v. *Stanley*, 4 Ch. D. 251; S. C. *sub nom.* *Bathurst* v. *Errington*, 2 App. C. 698). See Theobald on Wills, 4th ed.

ELECTION.

1. **The Doctrine:—**

Where any property, real or personal, is given to A. by will or deed, which property at the time of the death of the testator or of the execution of the deed, as the case may be, belongs to some third person (B.), solely or in joint tenancy, to whom, by the same will or deed, the testator or donor gives an alienable interest in property belonging to himself, there, subject to any expressions of intention contained in such will or deed, B. is not entitled to both retain his own property so given as aforesaid, and to take the property given to him by such will or deed, but must elect whether he will confirm the same or not; and if he elect to confirm the same, he will be entitled to any property given to him as aforesaid, and must give up, in favour of A., his claim to his own property; but if he elect to retain his own property, **he will be entitled only to the surplus**, if any, of the property given to him as aforesaid, **after compensating** A. thereout to the extent of the value of his own property.

For the purposes of this rule, property which descends to or vests in B. in consequence of the death of such testator, is deemed the property of B. at the time of such death.

This rule applies to all interests in property, however remote, contingent, or small in value, and whether the testator or donor knew or did not know that the property in question belonged to him.

2. **To raise a case of election three things must concur:—**

(*a*) The testator or **donor must give away what belongs to some one else.** The intention to give must of course be clear (*Box* v. *Barrett*, 3 Eq. 244); and where the testator has a partial interest or a reversion in the land devised, he will be presumed to deal only with such partial interest or reversion (*Dummer* v. *Pitcher*, 2 My. & K. 262, case of funded property generally); *cf.* *Shuttleworth* v. *Greaves* (4 My. & Cr. 35, case of shares in a specified company); *Noys* v. *Mordaunt* (2 Vern. 581, case of an estate tail).

(*b*) **The true owner** of the property thus given away **must be given property belonging to the testator or donor** (see *Bristowe* v. *Warde*, 2 Ves. junr. 336; *Re Aplin's Trust*, 13 W. R. 1062).

Certain chattels which were settled by a deed executed in 1877 upon trust to go and be held with a mansion of which the eldest son (Lord Chesham) was tenant-for-life, were bequeathed by a testator (who died in 1882) upon trust for sale for the benefit of his two younger sons. The residue of the real and personal estate was bequeathed to Lord Chesham. It was held by Chitty, J., that no case of election arose, for Lord Chesham **had no disposable interest in the chattels apart from the mansion house.** "But when he takes under the will there is nothing for him to give up, for there is nothing which he can give up" (*In re Lord Chesham*; *Cavendish* v. *Dacre*, 31 Ch. D. 466).

(*c*) Such **property must be freely alienable.**

A married woman can now elect (*Re Queade's Trusts*, 54 L. J. Ch. 786) since the Act of 1882; not, however, where there is a restraint on anticipation (*Re Vardon's Trusts*, 31 Ch. D. 275), on this point overruling *Re Queade's Trusts*, so that she can keep both property given to her on which the restraint is imposed, and that belonging to her which is given away. See also *Carter* v. *Silber*, (1892) 2 Ch. 278; and *sub nom.* *Edwards* v. *Carter*, (1893) A. C. 360.

ELECTION—*continued.*

Examples.

(*a*) A. by will devises real estate of his own (Whiteacre) to B., and also devises to C. real estate (Blackacre) belonging to B.

B. has two courses open to him to choose or elect between. He may elect to take under or against the whole (*) instrument (will and codicils), for he cannot both accept Whiteacre and retain Blackacre, leaving C. to take no benefit (*Cooper* v. *Cooper*, L. R. 6 Ch. 15; *Ib.* 7 H. L. 53). If, therefore, B. wishes to have Whiteacre, he must allow C. to take Blackacre, or must make him full compensation for it (*Pickersgill* v. *Rodger*, 5 Ch. D. 163).

Where, however, B. declines to give up Blackacre or compensate C., equity will give C. Whiteacre if it is of less value than Blackacre, or, if it is of greater value, will give C. the value of Blackacre out of it, and let the surplus value pass to B. under the will.

(*b*) A., donee of a special power of appointment over a certain fund, appoints, by will, a portion of the fund to his children (objects of the power and also entitled in default), and the remaining portion to B., C., and D. (not objects of the power). A., by the will, gave no property of his own to the children. Here the children are not bound to elect, but may keep their appointed shares, and also take, as in default of appointment, the share improperly appointed to B., C., and D. (*Bristowe* v. *Warde*, 2 Ves. jun. 336).

(*c*) A., donee of a special power of appointment, appoints to B. (not an object of the power), and at the same time bequeaths property of his own to C., who was entitled in default of appointment. C. must elect (*Whistler* v. *Webster*, 2 Ves. 367).

(*d*) A., donee of a special power of appointment, appoints absolutely to objects of the power, but an invalid condition is superadded. This, however, is considered swept out of the will for all intents and purposes, and no case of election arises (*Carver* v. *Bowles*, 2 R. & M. 301; *Blacket* v. *Lamb*, 14 B. 482); otherwise, where the whole appointment is invalid (*White* v. *White*, 22 Ch. D. 555).

(*e*) Where, however, an appointment of property in supposed exercise of a non-existing power is made, the person entitled to the property is put to his election.

Foreign Law.

(*f*) A., having real estate in both England and Scotland, makes an English will by which he devises land in both countries to his children. The will not being operative as regards the lands in Scotland, testator's heir (B.) is put to his election between the operative devises and bequests to him and the real estate in Scotland coming to him by descent (*Orrell* v. *Orrell*, 6 Ch. App. 302; *Brodie* v. *Barry*, 2 V. & B. 127).

See also *Dewar* v. *Maitland*, L. R. 2 Eq. 834, where testator (A.) by an English will devised realty in England and St. Kitt's to his heir-at-law (B.) for life. The will, by the law of St. Kitt's, being inoperative as to the real estate there situate, B. was put to his election.

Compensation.

(*g*) **The principle of election is compensation** not forfeiture, and the right

(*) A testator may, however, declare that the legatee is to elect only between *one* of the benefits given him by the will and his own property, in which case election will be confined to that (*East* v. *Cook*, 2 Ves. Sen. 30, explained in *Wilkinson* v. *Dent*, 6 Ch. 339).

ELECTION—*continued.*

to compensation is not lost by the death of the person put to his election, but survives against his estate (*Rogers* v. *Jones*, 3 Ch. D. 688).

(*h*) Election only applies to cases of bounty, therefore not to creditors, who may take the benefit of a charge or devise for payment of debts, and also enforce their claims by action (*Kidney* v. *Coussmaker*, 12 Ves. 136).

(*i*) In *Cooper* v. *Cooper* (L. R. 7 H. L. 53) it was decided that the next-of-kin of an intestate stood in the same condition as does a residuary legatee under a will, and may therefore be called upon to elect. For example, A. (testator) may make a bequest to B., and also, by the same will, dispose of unadministered property which B. takes as next-of-kin of C. Where there are several next-of-kin, each of them may have a separate right of election, and the others will not be bound by the election of the majority nor by that of the heir or administrator (*Fytche* v. *Fytche*, L. R. 7 Eq. 494).

(*j*) A. gives Whiteacre (B.'s fee-simple estate) to C. A. also gives B. property of his own. B. elects against the will and dies, leaving D. (to whom A. has also given property of his own) his heir-at-law or universal devisee. B., having elected, D. (who takes derivatively from B.) is not also called upon to elect (*Cavan* v. *Pulteney*, 2 Ves. 544; 3 Ves. 384).

And where, in the above example, Whiteacre is an estate tail and D. is the husband of B., D. does not lose his estate by the curtesy merely because he also takes benefits under A.'s will (*Grissell* v. *Swinhoe*, L. R. 7 Eq. 291).

Where, however, in either case B. dies without having elected, D. is bound to elect, and a residuary legatee and an intestate stand in the same position in this respect (*Cooper* v. *Cooper*, *supra*).

(*k*) Where A. bequeaths a legacy to B. on condition that B. shall not dispute the will, B. will be put to his election. He cannot claim the legacy and at the same time dispute the will (*Boughton* v. *Boughton*, 2 Ves. Sen. 12; *Wright* v. *Wilkin*, 33 L. T. Rep. O. S. 277).

3. **Approbation and Reprobation.**

In the case of a deed which confers a benefit on A. (who at the same time incurs a liability—for example, where A. (an infant) covenants to settle after-acquired property), A. cannot reject the liability as for some reason not binding, and at the same time accept the benefit (*Brown* v. *Brown*, L. R. 2 Eq. 481, and see *Re Vardon's Trusts*, 31 Ch. D. 275).

This rule does not, however, apply to wills. A beneficial gift under a will may be accepted and an onerous one rejected (*Aston* v. *Wood*, 22 W. R. 893; *Warren* v. *Rudall*, 1 J. & H. 1). See also *Syer* v. *Gladstone*, 30 Ch. D. 614. Testator may, however, show an intention that the legatee is to take all or none (*Green* v. *Britten*, 42 L. J. Ch. 187).

4. **Legacy and Succession Duty.**

Where A. bequeaths a sum (the property of B.) to C., and also bequeaths personalty of his own to B., no Legacy Duty is payable on the sum given up by B. to C. under the doctrine of election. For such property of B. is not personal estate of the testator, or personal estate which he has power to dispose of (*Laurie* v. *Clutton*, 15 Beav. 131; and see 36 Geo. 3, c. 52, s. 7).

In a case, therefore, of this kind it is the practice to claim Legacy Duty on the full value of the bequest to B., without any deduction being taken in respect of the sum so surrendered.

It was, however, held in the above case that, under 45 Geo. 3, c. 28, which imposes Legacy Duty on a legacy charged on land, Legacy Duty is chargeable

ELECTION—*continued.*

where A. devises real estate to B., and makes a bequest to C. of money belonging to B.; for such gift to C. is thereby charged on the real estate

Here the devisee, B., would appear to be entitled to a deduction from the value of his succession in respect of the sum surrendered to C.

EMBALMING.

Cost of embalming body and bringing it from a distance, not generally allowed as a deduction against Probate Duty or Estate Duty "as a reasonable funeral expense according to law" (s. 28 of 44 Vict. c. 12); Finance Act, 1894, s. 7 (1).

EMBLEMENTS.

The right to emblements (the year's crops, *fructus industriales*) is the right of the tenant *pur autre vie*, or of the executors or administrators of a tenant-for-life, to have the current year's crops, where the life estate determines between seed-time and harvest.

On the death of a tenant-for-life who has sown the land, his personal representatives can come upon the land to take the harvest.

The lessee of a term of years is not entitled by effluxion of time, forfeiture, etc., to emblements; otherwise where the lease is for a term should the lessee so long live, and the lessee dies before the expiration of the term.

A tenant at will is entitled to emblements if his estate is determined by the act of the grantor, or by his own death; otherwise, if determined by his own act.

Sub-tenants of a tenant-for-life have the right to emblements, even where the life estate is determined by the act of the tenant-for-life.

Where, however, such a sub-tenant holds at a rack-rent, he has now a right to continue to hold until the current year of his tenancy (14 & 15 Vict. c. 25, s. 1).

EMPLOYER'S LIABILITY ACT.

Moneys recovered thereunder, not "estate and effects" of the deceased, and not liable to Probate or Estate Duty.

ENFRANCHISEMENT.

Where a copyholder, after admittance, is compelled by the lord to enfranchise, the enfranchisement consideration can be taken as a deduction as against Succession Duty. This does not apply where a copyholder voluntarily enfranchises. See "Copyholds."

ENGRAVINGS.

Where objects of national and historic interest. See "Nation, Gifts to."

ENLARGEMENT OF INTEREST.

Estate Duty.

Where property is settled upon A. for life, remainder to B. for life, remainder to their children, and in default (which happens) to A. absolutely, and B. predeceases A., then A.'s life interest becomes enlarged to an absolute interest, and Estate Duty was, in practice, formerly held to be payable on such enlargement where the death took place after Aug. 1, 1894. But see "**Wood Case**" and construction of s. 5 (3) of Finance Act, 1894.

Finance Act, 1896 (s. 14) enacts that—

Where property is settled by a person on himself for life, and after his death on any other persons with an ultimate reversion of an absolute interest or absolute power of disposition to the settlor, the property shall not be deemed for the purpose of the principal Act, to pass to the settlor on the death of any such

ENLARGEMENT OF INTEREST—*continued.*

other person after the commencement of this part of this Act (July 1, 1896), by reason only that the settlor, being then in possession of the property as tenant-for-life, becomes, in consequence of such death, entitled to the immediate reversion, or acquires an absolute power to dispose of the whole property.

"The Amending Act may be merely declaratory to clear up doubts, and, even if not so intended, the presence of the section (s. 14) in the later Act cannot determine the construction of the earlier" (*Per* Vaughan Williams, J., in the above case).

Succession Duty.

S. 20 of the Succession Duty Act, 1853, enacts, *inter alia*, "if there shall be any prior charge, estate or interest, not created by the successor himself, upon or in the succession, by reason whereof the successor shall not be presently entitled to the full enjoyment or value thereof, the duty in respect of the **increased value** accruing upon the determination of such charge, estate, or interest, shall, if not previously paid, compounded for, or commuted, be paid at the time of such determination."

Therefore where X. settled a fund upon A. for life, remainder to B. for life, remainder (in events which happened) to A. absolutely, A.'s enlarged interest is an increased benefit under this section (*Attorney-General* v. *Robertson*, (1892) 2 Q. B. 694; C. A., (1893) 1 Q. B. 293).

ENTIRETIES, Tenancy by. See "Tenancy by Entireties."

ENTAIL. See "Estate Tail."

EQUITABLE MORTGAGE.

An equitable mortgage arises where a debtor has created a charge on his estate in favour of his creditor, without having clothed him with the legal estate.

The following mortgages are equitable:—

1. Where the subject of a mortgage is trust property, which security is effected either by a formal deed or a written memorandum, notice being given to the trustees in order to preserve the priority.
2. Where it is an equity of redemption.
3. Where there is a written agreement only to make a mortgage, which creates an equitable lien on the land.
4. Where a debtor deposits the title-deeds of his estate with his creditor or some person on his behalf, without even a verbal communication. The deposit itself is deemed evidence of an executed agreement or contract for a mortgage for such estate. This transaction is extensively resorted to, and is known in practice as an equitable mortgage by deposit of title-deeds (Wharton's "Law Lexicon").

As regards land registered under the Land Transfer Act, 1875, an equitable mortgage may be effected by depositing the land certificate of freeholds, or the office copy of the registered lease of leaseholds (s. 81).

EQUITY OF REDEMPTION.

1. Is the right which equity gives a mortgagor of redeeming his mortgaged estate after the time appointed for repayment of the money due has passed. This right is usually provided for in a mortgage deed by express proviso, or in statutory mortgages is implied.

It is, however, not a mere right but an ESTATE in the land, and may be dealt with

EQUITY OF REDEMPTION—*continued.*

(*e.g.* devised, granted, entailed with remainders, settled, mortgaged, etc.) as such (*Casborne* v. *Scarfe*, 1 Atk. 603; 1 W. & T. L. C. 1051). Moreover, on the death of the owner intestate the descent of the equity of redemption will be governed by the same rules of law as the legal estate.

2. The right to redeem is barred

By foreclosure,

By sale under a power, express or implied,

By lapse of time, as where the mortgagee has been in possession for 12 years without giving a written acknowledgment of the mortgagor's title or right of redemption (37 & 38 Vict. c. 57, s. 7).

By mortgagor making a second mortgage and fraudulently concealing the first from the second mortgagee (4 & 5 W. & M. c. 16).

ESCHEAT.

Escheat is the resulting back to the lord of the fee (usually the Crown), of lands of which a tenant dies in fee simple intestate, and without heirs. In order to complete his title the lord must enter on the land escheated. Escheats seldom occur since 33 & 34 Vict. c. 23 abolished all escheat for treason, felony and *felo de se*. Formerly, where the *cestui que trust* died intestate and without heirs, the trustee became beneficially entitled to the trust property. But the Intestates Estates Act, 1884 (47 & 48 Vict. c. 23) (*a*), extends escheat to incorporeal hereditaments and to equitable estates in corporeal hereditaments (s. 4; see also s. 7). See *Re Wood, Attorney-General* v. *Anderson*, 75 L. T. 28.

S. 6 of the same Act makes provision for the waiver by the Crown of its right where an intestate dies without an heir, on application made.

A., having an equitable estate in land, dies intestate and without heirs; X. who has the legal estate, takes the land in cases not affected by the said Act of 1884.

Where A., who is illegitimate, dies intestate, being *nullius filius* he can have no heirs but those of his own body. Consequently in default of issue, his freeholds in fee escheat to the lord of the fee, and his copyholds to the lord of the manor. His personal estate, for similar reasons, is forfeited to the Crown, and administration is granted to the appointee of the Crown, usually the Solicitor to the Treasury (Probate or Estate Duty, as the case may be, being payable). See Tristram and Coote's Probate Practice, 12th ed. See also "Illegitimacy."

Copyhold lands escheat to the lord of the manor, and his right of escheat is not affected where copyholds have been enfranchised under the Copyhold Act, 1894, s. 21.

ESCROW. See "Deed."

ESTATE BY ITSELF.

S. 4 of the Finance Act, 1894, enacts that—

For determining the rate of Estate Duty to be paid on any property passing on the death of the deceased, all property so passing in respect of which Estate Duty is leviable shall be aggregated so as to form one estate, and the duty shall be levied at the proper graduated rate on the principal value thereof.

(*a*) The Intestates' Estates Act, 1884, enacts that after Aug. 14, 1884, "where a person dies without an heir and intestate in respect of any real estate consisting of any estate or interest whether legal or equitable in any incorporeal hereditament, or of any equitable estate or interest in any corporeal hereditament whether devised or not to trustees by the will of such person, the law of escheat shall apply in the same manner as if the estate or interest, above mentioned, were a legal estate in corporeal hereditaments."

ESTATE BY ITSELF—*continued.*

Provided that any property so passing, in which the deceased **never had an interest,** or which under a **disposition not made by the deceased** passes immediately on the death of the deceased **to some person other than the wife or husband or a lineal ancestor or lineal descendant** of the deceased shall not be aggregated with any other property, but shall be an **estate by itself,** and the duty shall be levied at the proper graduated rate on the principal value thereof; but if any benefit under a disposition not made by the deceased is reserved or given to the wife or husband, or a lineal ancestor or lineal descent of the deceased, such benefit shall be aggregated with property of the deceased for the purpose of determining the rate of Estate Duty.

S. 16 (3) enacts that—

Where the **net** value of the property, real and personal, in respect of which Estate Duty is payable on the death of the deceased, **exclusive of property settled otherwise than by the Will** of the deceased, **does not exceed £1000,** such property, for the purpose of Estate Duty, shall not be aggregated with any other property, but shall form an **estate by itself;** and where the fixed duty or Estate Duty has been paid upon the principal value of that estate, the Settlement Estate Duty and the Legacy and Succession Duties shall not be payable under the will or intestacy of the deceased in respect of that estate. See also "Small Estates."

Examples.

1. A. dies after Aug. 1, 1894, and leaves free estate, £874 (net): s. 16 (3).
   A. is also tenant-for-life of certain funds (£3570), which on his death pass to his seven sisters (s. 4, proviso).
   The free estate (£874) is an estate by itself, and Estate Duty (rate two per cent.) is payable on £880 or £800 according as the death was before July 1, 1896, or after June 30, 1896. See "Fractions, £10, £100."
   As to the settled funds there are seven estates, each share being treated as an "estate by itself," and Estate Duty is payable in each case upon £510 (two per cent.) or £500 (one per cent.), according as the death was before or after the above dates.
   It is thus evident that, in an extreme case where there are a large number of shares, a settled fund, though of large amount, may practically escape Estate Duty altogether.
   If A. is **also settlor,** as well as tenant-for-life, the fact that the fund passes out of the family is immaterial, as the **disposition is made by the deceased,** and the rate of duty on the aggregable fund (£3570) will be 3 per cent.
2. Where duty is commuted on a fund (say) £800 (part of a settled fund of £3000) passing on the death of the expectant deceased, then the whole of such settled fund is treated as an "estate by itself," and duty at the rate of three per cent. is payable on the commuted value of the £800.
3. X. (who died before Aug. 2, 1894) devised real estate upon trust to sell, and proceeds thus—to A. for life (died on Aug. 1, 1896), and on his death,
   Half (£250) to B., who died in 1893 (*a*), and bequeathed her personalty to K., L., M.; Probate Duty payable; but by the "Dodington Case" (*q.v.*), exempt from Estate Duty.

(*a*) The "person" to whom the property passes "immediately" upon a death after Aug. 1, 1894, must be a **living person,** who upon that death acquires a beneficial interest in possession in the property.

ESTATE BY ITSELF—*continued.*

Half (£250) to A.'s brother C. (living). Duty payable at 1 per cent. upon £250 [£200] as an "estate by itself."

4. A non-aggregable charge on an aggregable fund is in practice treated as an "estate by itself;" a charge on a non-aggregable fund in favour of one or more of the "family" of the deceased is, however, now treated as an aggregable fund. See "Benefit."
5. Note that where each of several estates A., B., C., etc., is an "estate by itself," they are not aggregable *inter se.*

S. 20 (1) of the Finance Act, 1896, enacts that—

Where any property passing on the death of a deceased person consists of such pictures, prints, books, manuscripts, works of art, scientific collections or other things not yielding income as appear to the Treasury to be of national, scientific, or historic interest, and is settled so as to be enjoyed in kind in succession by different persons, such property shall not, on the death of such deceased person, be aggregated with other property, but shall form an **estate by itself**, and, while enjoyed in kind by a person not competent to dispose of the same, be exempt from Estate Duty, but if it is sold or is in the possession of some person who is then competent to dispose of the same, shall become liable to Estate Duty.

ESTATE DUTY.

The Estate Duty was imposed by the Finance Act, 1894 (57 & 58 Vict. c. 30). Like Probate Duty it taxes the principal value of the property which passes on the death of the deceased, and not (like the Legacy or Succession Duty) the mere interest to which the legatee or successor succeeds. It is, however, not limited like Probate Duty to assets which (at the time when the duty attaches) are within the jurisdiction of the Court of Probate, but is imposed on "all property, real or personal, settled or not settled, which passes" on the death of a person dying on or after Aug. 2, 1894 (s. 1).

Property passing includes (inter alia) the following :—

Property of which the deceased was **competent to dispose** (*q.v.*) at his death, whether he actually disposed of it by his will or not.

Donations *mortis causâ* (*q.v.*).

Inter vivos gifts (*q.v.*) of property made by the deceased within a year of his death without reservation.

Inter vivos gifts made by the deceased at any time, whereof *bonâ fide* possession was not immediately taken and thenceforth retained to the entire exclusion of the deceased, but a benefit, either charged upon the property or not, was reserved or secured to the deceased by contract or otherwise, or a power or authority was reserved to the deceased to restore to himself or to reclaim the absolute interest in such property or in some part of it.

Property which the deceased, having been absolutely entitled thereto, either by himself alone or by arrangement with some other person, caused to be transferred to or vested in himself and some other person jointly, either by disposition, purchase, investment, or otherwise, so that the beneficial interest in such property, or in some part thereof, passed or accrued by survivorship on his death to such other person. See "Joint Investment."

The deceased's severable share of property of which he was joint tenant or joint owner with another or with others. See "Joint Tenancy."

Property which the deceased had an enjoyment of or interest in for life, or for

ESTATE DUTY—*continued.*

some period determinable by reference to death under an express or an implied trust in a settlement made by the deceased by instrument *inter vivos*, or under an express or implied trust, created by the deceased in writing or otherwise.

Policies which the deceased effected on his life, and kept up wholly or partially for the benefit of a donee, whether nominee or assignee. See "Policy."

Annuities (other than (see s. 15 (1)) a single annuity not exceeding £25, or the first granted of two or more such annuities), or other interests, which the deceased, either by himself alone, or in concert or by arrangement with some other person, purchased or provided so that a benefit arose or accrued by survivorship or otherwise, on the death of the deceased.

Property not comprised in any of the foregoing classes in which the deceased or some other person had an interest which ceased on the death of the deceased, to the extent to which a benefit accrued or arose by the cesser of such interest, but exclusive of property the interest in which, of the deceased or other person, was only an interest as holder of an office or recipient of the benefits of a charity, or as a corporation sole.

The expression "property" includes real property and personal property, and the proceeds of sale thereof respectively, and any money or investment for the time being representing the proceeds of sale (see s. 22 (1) (*f*)).

Property passing on the death includes property passing either immediately on the death, or after any interval, or at a period ascertainable only by reference to death, either certainly or contingently, and either originally or by way of substitutive limitation (see s. 22 (1) (*l*)).

Foreign Property.

Immoveable property situate out of the United Kingdom is not chargeable with Estate Duty (see s. 2 (2)).

Moveable property situate out of the United Kingdom is not chargeable with Estate Duty where the deceased was the owner and was domiciled **out** of the United Kingdom at the time of his death. It is chargeable where the deceased was the owner and was domiciled **in** the United Kingdom at the time of his death. It is also, speaking generally, chargeable where the deceased was only interested for life, and at his death the property formed the subject of a British trust, or was vested in a British trustee (see s. 2 (2)).

Rates and Scale of Duty (s. 17).

Principal Value of the Estate.						Rate per cent.
	£				£	
Above	100	but	not	above	500	1
„	500	„	„		1,000	2
„	1,000	„	„		10,000	3
„	10,000	„	„		25,000	4
„	25,000	„	„		50,000	4½
„	50,000	„	„		75,000	5
„	75,000	„	„		100,000	5½
„	100,000	„	„		150,000	6
„	150,000	„	„		250,000	6½
„	250,000	„	„		500,000	7
„	500,000	„	„		1,000,000	7½
„	1,000,000	-	-	-	- - -	8

ESTATE DUTY—*continued.*

Where property, in respect of which Estate Duty is leviable, is settled by the will of the deceased, or having been settled by some other disposition, passes under that disposition on the death of the deceased to some person not **competent to dispose** (see s. 22 (*a*)) of the property, a further Estate Duty called "Settlement Estate Duty," is leviable upon the principal value of the settled property, except where the only life interest in such property, after the deceased's death, is that of the husband or wife of the deceased (see s. 5 (1) (*a*)), or where the disposition took effect before Aug. 2, 1894 (see s. 21 (1) (4)), or, under the deceased's will, where the net value of the property in respect of which Estate Duty is leviable on the death of the deceased, exclusive of property settled otherwise than by the will of the deceased, does not exceed £1000 (see s. 16 (3)).

The rate of the Settlement Estate Duty is one per cent.

As to adjustments of fractions of £100 capital, to determine rate of duty chargeable, and principal value upon which the duty at such rate is to be charged, see "Fractions of £100, £10."

Small Estates; Gifts to Nation, etc.

Where the net value of the property, real and personal, on which Estate Duty is payable on the death of the deceased, exclusive of property settled otherwise than by the will of the deceased, does not exceed £1000, such property is not to be aggregated with any other property, but is to form an estate by itself (see s. 16 (3)).

Gifts of pictures, prints, books, manuscripts, works of art and scientific collections, of national, scientific, or historic importance, given for national purposes, or to any university, or to any county council or municipal corporation, the Estate Duty whereon has been remitted by the Treasury, are not to be aggregated with any other property (see s. 15 (2)).

Objects of national, scientific, or historic interest, admitted by the Treasury to be such, passing on a death on or after July 1, 1896, and settled so as to be enjoyed in succession in kind only, are to form an "Estate by itself" (see Finance Act, 1896, s. 20 (1)).

Deductions.

Where debts, incumbrances, etc., may be deducted against capital and colonial duties, and prior duties may be deducted against duty, see "Deductions."

Accountability.

By whom, when, and on what amount payable, see "Payment."

Exemptions.

As to exemption from Estate Duty of trust property, property on which Probate or Account Stamp Duty has been paid, etc., see "Exemptions."

Aggregation.

For determining the rate of Estate Duty to be paid in respect of any property passing on the deceased's death, all property so passing in respect of which Estate Duty is leviable is to be **aggregated** so as to form **one estate**, and the duty is to be levied at the proper rate on the principal value thereof (s. 4), see "Aggregation."

Estate by itself.

Where the property passing is not to be aggregated with any other property but is to be an estate by itself, see "Estate by itself."

ESTATE DUTY—*continued.*

Double Duty.

If the Estate Duty has already been paid in respect of the settled property since the date of the settlement, neither it nor the Settlement Estate Duty is again payable in respect thereof, unless the deceased was, at the time of his death, or had been at any time during the continuance of the settlement, competent to dispose thereof (s. 5 (2)).

Husband and Wife.

Where a husband or wife is entitled, either solely or jointly with the other, to the income of any property settled by the other under a disposition which has taken effect before the commencement of this part of this Act, and on his or her death the survivor becomes entitled to the income of the property settled by such survivor, Estate Duty shall not be payable in respect of that property until the death of the survivor (s. 21 (5)).

Rectification.

Where further duty payable, or duty is returnable, see "Rectification."

Delivery and Verification of Accounts and Statements.

The **executor** (*q.v.*) of the deceased is, to the best of his knowledge and belief, to specify in appropriate accounts annexed to the Inland Revenue **Affidavit** (*q.v.*) **all** the property in respect of which Estate Duty is payable upon the death of the deceased, whether he is or is not accountable for the duty thereon (see s. 8 (3)).

Accounts (*q.v.*) and statements are to be verified on oath, and by production of all necessary books and **documents** (*q.v.*) (see s. 8 (14)).

Every person accountable for Estate Duty, and every person whom the **Commissioners** (*q.v.*) believe to have taken possession of or administered any part of the estate of the deceased or of the income thereof, is, to the best of his knowledge and belief, if required by the Commissioners, to deliver to them and verify a statement of such particulars and evidence as they require, relating to any property which they have reason to believe to form part of an estate, in respect of which Estate Duty is leviable on the death of the deceased (see s. 8 (5)).

Penalties (*q.v.*) are provided for the wilful failure to deliver accounts or to comply with the requirements which the Commissioners are empowered to make (see s. 8 (6) and (14)).

See also "Interests in Expectancy;" "Commutation;" "Foreign Property;" "Agricultural Property."

Examples.

In each of the following examples A. is presumed to have died after Aug. 1, 1894.

1. A. dies leaving free real and personal estate in the United Kingdom; foreign moveables (including mortgages secured on immoveables, *Re Lawson* (1896), 2 I. R. 418), and immoveables (including leaseholds).

   The whole is liable to Estate Duty, except the immoveables; the foreign moveables being only exempt where deceased died domiciled abroad (ss. 1, 2 (2)). See "Domicile."

2. A. was also a simple tenant-for-life,

   (i.) Under the will of X., of real estate (or the proceeds thereof), English personalty (including leaseholds), and foreign personalty, which last,

ESTATE DUTY—*continued.*

bequeathed to different persons, lineals, in succession, paid Legacy Duty on the corpus at the rate of 1 per cent.

Estate Duty is here payable on the realty (or proceeds), and on the foreign personalty (an allowance in respect of the 1 per cent. Legacy Duty being made under s. 21 of Finance Act, 1896, where the deceased died on or after July 1, 1896, see "Deductions"); but not on the English personalty (s. 21 (1) Finance Act, 1894).

Where the (i.) English personalty, (ii.) foreign personalty, and (iii.) realty constituted a mixed fund, in practice the duty is claimed on the fund representing (ii.) and (iii.), which would have existed had a strict course of administration been followed.

(ii.) Under a settlement, of which he was settlor, of realty and personalty, part of which passed by his death to his (A.'s) "family," and part to his collateral relations, or to strangers.

Estate Duty payable on the whole as an aggregable fund, the disposition being by the deceased (s. 4 proviso).

Where, however, Y. was settlor, the part passing outside the "family" would form an "estate by itself" (s. 4, proviso), or several such estates, according to the number of beneficiaries, see "Estate by itself."

Where B. (wife of A.) was settlor, and B. simply took for life on A.'s death, then no Estate Duty would be payable till B.'s death (s. 21 (5)), and no Settlement Estate Duty, if B. was the only other life tenant (s. 5 (1 *a*)).

Where, however, a preceding tenant-for-life (T.) is still alive, and by A.'s death his (T.'s) life interest becomes enlarged to an absolute interest, see "Wood Case"; "Enlargement of Interest"; and where the property passed to some person other than T., no Estate Duty is payable by A.'s death, as A. died before he became entitled in possession, and subsequent limitations under the settlement continue to subsist (s. 5 (3)).

(iii.) Under a settlement of which Z. was settlor, the property passing by the death of A. (the sole tenant-for-life) to Z. who survives A.

No Estate Duty payable if A. dies on or after July 1, 1896 (Finance Act, 1896, s. 15).

Where there is a second tenant-for-life, B., who, with Z. the settlor, survives A., Estate Duty is payable upon the property passing (s. 2 (1 *b*)). B. then dies leaving Z. surviving. No Estate Duty payable where B.'s death before July 1, 1896 (s. 5 (2)); but where B. dies on or after that date, see s. 15 (2), Finance Act, 1896. See also *Attorney-General* v. *Walker*; *Re Reversionary Interest Society*; *Times*, May 14, 1896.

(iv.) Under a settlement of personalty, on which, on the death of a preceding tenant-for-life, Account Stamp Duty was paid or payable.

No Estate Duty payable (Finance Act, 1894, s. 21 (1)).

(v.) Under a settlement of property, the rents and profits of which on his death were directed to be accumulated for 21 years, and then to B. for life, and in default to C.

Estate Duty payable on A.'s death (notwithstanding the trust for accumulation) on the principal value of the property passing (s. 22 (1 *l*)).

ESTATE DUTY—*continued.*

(vi.) Under a settlement of property passing on his death to M. M. had (before Aug. 2, 1894) **sold** (for full consideration in money) the property to N.

No Estate Duty payable, but only the duty (*e.g.* Succession Duty, and possibly Account Stamp Duty, and (or) Temporary Estate Duty) which would have been payable had the Finance Act, 1894, not been passed (s. 21 (3)).

N. sells to O. O. stands in N.'s shoes as regards the exemption from Estate Duty, not so, however, where he is simply a gratuitous alienee.

And where N. predeceases A. (the tenant-for-life), and dies before Aug. 2, 1894, no Estate Duty is held, in practice, to be payable on A.'s death. Where N. dies after that date, Estate Duty is payable on the value of his interest in expectancy, s. 2 (1 *a*); but none is payable on A.'s death, s. 21 (3). Should N., however, have settled the property on himself for life, remainder to P. for life, remainder over, and then have predeceased A., Estate Duty is claimed on A.'s death, P. not being in practice regarded as the assign of N.

And where not sold but **mortgaged** to N., then M. is liable for Estate Duty on the value of his equity of redemption, the duty being in respect of the whole property, and ranking as a charge subsequent to that of N. (s. 21 (3)).

(vii.) *a.* Where, however, in Example vi., M. (not having sold or mortgaged his reversion) had predeceased the tenant-for-life, A., and Probate Duty had been paid on the value of his interest in expectancy, no Estate Duty is payable on the fund passing on A.'s death, see "Dodington Case." The property here being personalty.

b. Where A. had previously surrendered his life interest so that it should merge in the interest in remainder, see "Beech Case."

(viii.) Under a settlement of part (P) of a settled fund, passing on his death to T. for life, T. being also tenant-for-life of the remaining part (Q.), and the whole passing on the death of T. to A.

Let r be the rate payable on A.'s free estate (which exceeds £1000). Then if the settled fund is an aggregable fund, Estate Duty is payable on P., at the rate r, under the settlement (no further duty being payable thereon, as part of A.'s free estate, s. 7 (10)), and also on A.'s interest in expectancy in Q., the remaining part, s. 7 (6).

Where, however, the fund is a non-aggregable fund (rate x), then if $r > x$, duty is also payable on P. (as an interest in expectancy) as part of A.'s free estate at the rate $r - x$ (*), in addition to the rate x payable under the settlement, and also on Q. (as an interest in expectancy) at the rate r.

But if payment of duty is deferred on P. and Q. until the interest falls into possession, then if s be the rate then attributable to P. and Q. by s. 7 (6 *b*), the rate as to P., for Estate Duty, will be $s - x$ (*), and the rate as to Q. will be s.

3. A. was a tenant-for-life, with a general power of appointment over property, K., which passed in default of exercise of the power to B.; and property, L., which, however, he appointed by will.

(*) As to the method adopted in practice, to arrive at this result, see "Interest in Expectancy" (5).

ESTATE DUTY—*continued.*

Estate Duty is payable on K. and L.; on the former by the trustees as passing under the disposition conferring the power, and on the latter as part of A.'s estate. See "Powers of Appointment."

Miscellaneous.

4. (*a*) A. covenanted to pay C. an annuity during his (A.'s) life. No property passes on A.'s death.

(*b*) A. enjoyed a rent-charge (R.) issuing out of real estate. Find the net annual value (N.) of the realty, after deducting an annual sum, attributable to the deductions allowed by s. 7 (1). Then if P. be the principal value of the real estate, the amount liable to Estate Duty, by the cesser of the rent-charge, is £$\frac{P \cdot R}{N}$

(*c*) A. devised his real estate to his son S., subject to a jointure rent-charge limited (*a*) by his marriage settlement, or (*b*) by his will, to his wife W. S. pays Estate Duty on the whole real estate, recovering the rateable proportion from W. under ss. 9 (1), 14 (1). No further duty on the cesser of the jointure.

See also "Aggregation"; "Gifts Inter Vivos"; "Joint Tenancy"; "Joint Investment"; "Leaseholds" (falling in of lease); "Autre vie Estates"; "Annuity."

ESTATE FOR LIFE.

Estates for life are freeholds not of inheritance. They are denominated real property (Wills Act, ss. 3, 6). Where given *pur autre vie*, see "Estate *pur autre vie*." A tenant-for-life without impeachment of waste is only liable for equitable waste, that is, acts formerly punishable in equity but not at law. For example, destroying the mansion house or felling ornamental timber.

However, he has now no legal right to commit equitable waste unless so authorized by the instrument creating the estate.

He may, however, with this exception cut and sell timber, and apply the proceeds for his own benefit, and he may also open and work mines. See also Settled Land Act, 1882, ss. 29, 35.

Where mortgage debt, paid off by tenant-for-life, is held to be extinguished, see "Merger."

A tenant-for-life may create a permanent charge on the estate with a view to improvements.

(*a*) By the Public Money Drainage Act, 1846, and Amendment Acts, for Drainage; the advances to be repaid by a rent-charge on the land within 22 years.

(*b*) By the Improvement of Land Act, 1864, for drainage, irrigation, etc., the money to be raised by way of rent-charge at 5 per cent. charged on the inheritance repayable in 25 years. Further powers are given by the Limited Owners Acts, 1870 and 1877.

(*c*) By the Settled Land Act, 1882 (*q.v.*).

ESTATE IN FEE SIMPLE.

1. Is the largest estate or interest which the law of England allows any person to possess in landed property, and is that which a man hath to him and his heirs; so that the estate is descendible, not merely to the heirs of his body, but to collateral relations, according to the rules of descent (Williams, R. P., 1 St. C.).

ESTATE IN FEE SIMPLE—*continued.*

2. The following devises carry a fee—
   Devise to A. (though a bastard) and his heirs.
   Devise to A. and his lawful heirs.
   Devise to A., his executors and administrators.
   Devise of gavelkind land to A. and his oldest heir.
   By Wills Act (s. 28) a devise without words of limitation passes the fee or other the whole estate or interest, which the testator had power to dispose of by will, unless a contrary intention shall appear by the will.
   A devise, however, to A. without words of limitation, followed by a devise of the same property to B. with words of limitation, will give A. a life interest only (*Grosvenor* v. *Watkins*, L. R. 6, C. P. 500). See also "Heirs."

ESTATE TAIL.

1. The limitation of an estate to A. and the heirs of his body creates an estate tail general; an estate tail special being created where the limitation is to particular heirs, as, for example, to A. and the heirs of his body, on Mary his now wife to be begotten.
   An estate in tail male (female) is created where the limitation is to A. and the heirs male (female) of his body.
   Words of limitation and procreation were not necessary in a will to create an entail, the intention being looked at, and after Dec. 31, 1881, an estate tail may be created by deed by using the words "in tail" without the words heirs of the body; and an estate in tail male or in tail female by the words "in tail male" or "in tail female" without the words heirs male or heirs female of the body (44 & 45 Vict. c. 41, s. 51).
   A tenant-in-tail in possession may bar the entail and convert his estate into a fee simple by deed, enrolled in chancery within six months after its execution.
   A tenant-in-tail in remainder bars the entail by the same means; but to effect a complete bar of those in remainder the consent of the protector (generally the tenant-for-life, but any number of persons not exceeding three may be appointed by the settlor in the place of the tenant-for-life) must be obtained (*a*). Without this consent he can only create a base fee (*q.v.*).
2. The devise of an estate tail, or quasi entail, does not lapse by the death of the devisee in the testator's lifetime, if issue inheritable under the entail survive the testator. See "Lapse."
   An estate tail does not merge in the immediate reversion, or remainder in fee simple.
   Where a tenant-in-tail mortgages his estate by deed enrolled under the Fines and Recoveries Act, the mortgage is, to the extent of the estate created thereby (unless it be an estate *pur autre vie* or for years), an absolute bar of the entail in equity as well as in law.
   An estate tail cannot be alienated by will or contract.
   An estate tail determines where, on the death of the original donee of the estate or of a succeeding tenant, there is a total failure of issue of the donee.
   And where limited in special tail, the estate ceases to exist as an estate tail on the possibility of issue becoming extinct, although the donee be living.

(*a*) The owner (beneficial owner: *Re Dudson's Contract*, 8 Ch. D., 628, C. A.) of the estate (not being an estate for years, unless determinable on a life or lives) prior to the entail or the first of such estates, if more than one then subsisting under the same settlement shall be protector of the settlement (s. 22 of Fines and Recoveries Act, 1833).

ESTATE TAIL—*continued.*

An estate tail in personalty vests absolutely in the legatee.

3. An estate in fee simple may be broken up into several estates in fee tail to take effect one after another, and this does not offend against the law of perpetuities (provided the entails are not limited to the children of an unborn child) because the first or any subsequent tenant-in-tail entitled to the land may, when he becomes of age, with the consent of the protector, if one, bar the entail and thus acquire dominion over the property (Williams, R. P.; *Whitby* v. *Mitchell*, 42 C. D. 494; and see 45 & 46 Vict. c. 38, ss. 3, 58).

Estates tail are not within Locke King's Act (*q.v.*). An estate tail could be barred by a married woman, although restrained by anticipation (*Cooper* v. *Macdonald*, 7 Ch. Div. 288).

4. Where there is a gift or grant of an estate to one in special tail, and the person from whose body the issue was to spring dies without issue, or the issue becomes extinct, the surviving tenant is then termed "tenant-in-tail after possibility of issue extinct."

Tenants in tail **cannot bar the entail** in the following cases:—

(1) First estates tail granted by the Crown as a reward for public services, so long as the reversion continues in the Crown. This restriction, imposed in the reign of Henry VIII., has been continued by the Fines and Recoveries Act (1833), and by the Settled Estates Act, 1877, s. 55, so far as regards any sale or lease beyond the term of twenty-one years.

(2) Certain entails created by particular Acts of Parliament.

(3) A tenant-in-tail, after possibility of issue extinct, cannot bar. But by 45 & 46 Vict. c. 38, s. 58, such tenants, if in possession, have the powers of a tenant-for-life under the Settled Land Act, 1882, not being a tenant-in-tail of land purchased with money provided by Parliament in consideration of public services, and restrained from barring the entail.

Crown Entails.

S. 5 (5) of the Finance Act, 1894, enacts that—

Where any lands or chattels are so settled, whether by Act of Parliament or royal grant, that **no one** of the persons successively in possession thereof is **capable of alienating the same**, whether his interest is in law a tenancy for life or a tenancy in tail, the provisions of this Act with respect to settled property shall not apply, and **the property passing** on the death of any person in possession of the lands and chattels shall be **the interest of his successor** in the lands and chattels, and such interest **shall be valued, for the purpose of Estate Duty, in like manner as for the purpose of Succession Duty.**

5. **Succession Duty.**

Where A., a tenant-in-tail, succeeds before Aug. 2, 1894, to real estate and dies without having disentailed, only the instalments of Succession Duty which have actually become due will be payable (s. 21 of 16 & 17 Vict. c. 51).

Where the tenant-for-life and tenant-in-tail in remainder disentail and resettle, the original disposition creating the entail is at an end save for the purpose of determining the rate of duty payable.

6. **Estate Duty and Succession Duty on Principal Value.**

S. 22 (2 *a*) of the Finance Act, 1894, enacts (*inter alia*) that—

"A person shall be deemed **competent to dispose** of property if he has such an estate, or interest therein, or such general power as would if he were

ESTATE TAIL—*continued.*

sui juris, enable him to dispose of the property, **including a tenant-in-tail whether in possession or not.** As to the liability of such property to Estate duty, see "Competent to Dispose."

EVASION OF DUTY.

"Where any disposition of property shall purport to take effect presently, or under such circumstances as not to confer a succession, but by the effect or in consequence of any engagement, secret trust or arrangement capable of being enforced in a court of law or equity, the beneficial ownership of such property shall not, *bonâ fide*, pass according to such disposition, but shall in fact devolve to any person on death, or at some period ascertainable only by reference to death, then such last-mentioned person shall be deemed to acquire the property so passing as a succession derived from the person making the disposition as the predecessor; and where any Court of competent jurisdiction shall declare any disposition to have been fraudulent, and made for the **purpose of evading** the duty imposed by this Act, it shall be lawful for such Court to declare a succession to have been conferred on such person at such time and to such an extent as such Court shall think just; and such last-mentioned person shall be deemed to have taken a succession accordingly, derived from the person making such disposition as predecessor (s. 8 of 16 & 17 Vict. c. 51, The Succession Duty Act).

An **expectant successor** cannot postpone or defeat payment of Succession Duty by creating determinable charges, other than by way of gift so as to create a **new succession** (*q.v.*).

EVIDENCE.

Evidence as to payment of duty, see "Certificate."

A probate insufficiently stamped is not admissible in evidence (9 & 10 Will. 3, c. 25, s. 59; 55 Geo. 3, c. 184, s. 8).

EXAMPLES.

1. Legacies.
   (*a*) Absolute bequests, see "Legacy Duty."
   (*b*) Gifts by way of annuity, see "Annuity."
   (*c*) Gift of residue, see "Residue."
2. Successions.
   (*a*) Disposition of property by will,
   (*b*) Disposition of property by deed,
   } See "Succession Duty."
3. Gifts liable to Account Stamp Duty.
   (*a*) Donations, *mortis causâ*, see "Donations, *mortis causâ*."
   (*b*) Immediate gifts, *inter vivos*, see "Gift *inter vivos*."
   (*c*) Gifts by survivorship, see "Joint Tenancy."
   (*d*) Settlements in favour of volunteers, see "Voluntary Settlement."
4. Gifts liable to Estate Duty, see "Estate Duty," "Aggregation," "Estate by itself."

EXCESSIVE APPOINTMENTS. See "Powers of Appointment."

EXCHANGE, POWER TO.

"Where any settled real property comprised in a succession shall be subject to any power of sale, **exchange**, or partition, exerciseable with the consent of the successor, or by the successor with the consent of another person, he shall not

EXCHANGE, POWER TO—*continued.*

be disqualified by the charge of duty on his succession from effectually authorizing by his consent the exercise of such power, or exercising any power with proper consent, as the case may be, and in such case the **duty shall be charged substitutively upon the successor's interest in all property acquired in substitution** for the real property before comprised in the succession, and in the mean time upon his interest also in all moneys arising from the exercise of any such power, and in all investments of such moneys" (s. 42 of 16 & 17 Vict. c. 51).

EXECUTOR AND ADMINISTRATOR.

The Office.

An executor is one to whom a testator commits the execution of his will; he may be appointed either by express words or by implication or construction.

An executor *de son tort*, or of his own wrong, is one who takes upon him the office of an executor by intrusion, not being so constituted by the testator or deceased, nor for want of such constitution, substituted by the Court to administer. The term is used indifferently of those who so intrude themselves into the affairs whether of testates or intestates. He is liable for the due payment of Legacy (36 Geo. 3, c. 52, s. 6) and Succession (16 & 17 Vict. c. 51, ss. 1, 44) Duties; but his liability is restricted to the assets which have come into his hands. The chief difference between such an executor and one duly appointed is this: that an executor *de son tort* is not allowed to derive any benefit from his own wrongful intermeddling, whereas a regularly appointed executor, if a creditor of the deceased, may lawfully retain his own debt out of the legal assets in preference to all other debts of the same degree.

Where an executor *de son tort* is really acting as executor his acts will bind the rightful executor and also the property provided the party dealt with has fair reason to suppose that he (the executor *de son tort*) has authority to so act.

And see *Attorney-General* v. *New York Breweries Co., Ltd.*, 46 W. R. 143, where a company was held to constitute itself an executor *de son tort*, so as to render itself liable to Probate Duty.

Devolution of Office.

On the death of one of several executors the office survives to the survivor or survivors; but on the death of the sole or last surviving executor his executor (if he has accepted the executorship) cannot renounce the executorship of the original testator, but at once represents him, without any administration *de bonis non*. It is necessary, however, that the first executor should have proved his testator's will, for if he died before probate his executor is not executor to the first testator. Where, however, an executor did not himself prove his testator's will, but only procured administration with the will annexed to be granted to his attorney, still the chain of representation was not broken, and the executors of such executor represented the original testator (*In the goods of Bayard*, 1 Robert, 769; and see *In the goods of Margaia*, 9 P. D. 236). The rule however, does not apply where the will of the original testator is proved abroad, the latter testator's will being proved in England. Where a married woman, an executrix, appointed executors, they represented the original testator provided they took probate of her will in general form; but not if their probate was a limited one, nor if they were appointed by a will made under a power.

EXECUTOR AND ADMINISTRATOR—*continued.*

An administrator of an executor does not represent the testator; where, however, an executor of an executor is a minor, and an administrator has been appointed during his minority, such administrator represents temporarily the original testator. (See *Walker's Executors*, 3rd ed.).

Rights, Duties, and Liabilities.

The deceased must be buried in a manner suitable to the estate which he leaves behind him. If, however, an executor or administrator be extravagant in the matter of funeral expenses, it is a species of *devastavit*, and shall only be prejudicial to himself, and not to the creditors or legatees (*Vez* v. *Emery*, 5 Ves. 14; *Browne* v. *Spooner*, 1 Ves. junr. 291). The will must be proved. Probate, however, is a mere ceremony, evidence of the right which the executor derives from the will, an executor being on the testator's death a complete executor to all purposes "but bringing of actions," which he may begin, but cannot proceed with beyond the point at which it is necessary to prove his title, and which can only be done by the production of the probate. An administrator, however, may do nothing until letters of administration are issued, for he derives his title entirely from his appointment as administrator, from which date the deceased's property vests in him. However, by the practice of the Court the grant is held to relate back to the death of the intestate, as otherwise hardship would often ensue to the parties beneficially entitled.

All goods, chattels, and choses in action must be collected, and to that end actions must be brought, if necessary, against persons withholding them.

Executors must be allowed a reasonable time for breaking up the establishment, and discharging the servants of the deceased testator, and two months have been held not unreasonable delay, having regard to the circumstances of the case.

After payment of all funeral charges, and the expenses of proving the will and the like, the debts of the deceased must be paid in due order. Crown debts coming first, and debts due on voluntary bonds last. For this purpose the general personal estate is the primary fund applicable, and it requires strong words to exonerate it.

Where freehold lands vest in the executor at all, they vest in him *quâ* devisee, and not *quâ* executor; but see now Land Transfer Act, 1897, s. 1, which enacts *inter alia*, that, where real estate is vested in any person without "a right in any other person to take by survivorship it shall, on his death, notwithstanding any testamentary disposition, devolve to and become vested in his personal representatives, or representative from time to time as if it were a chattel real vesting in them or him." See, further, "Land Transfer Act, 1897."

In addition to his statutory powers under the Law of Property Amendment Act, 1859 (22 & 23 Vict. c. 35, ss. 27 & 28) and Conveyancing Act, 1881 (44 & 45 Vict. c. 41, s. 7), an executor has other rights, as to the payment of debts, of considerable importance.

An executor may, among creditors of equal degree, pay one debt in preference to another. He is not bound by, and cannot be compelled to plead the Statute of Limitations, and may therefore pay a statute-barred debt; but see *In re Wenham; Hunt* v. *Wenham*, 40 W. R. 636, as to the limitations to this right.

As to an executor's right of retainer, see "Retainer."

Where a debtor is appointed executor (or takes out administration) to his creditor, although formerly the debt was extinguished at law, for the debt could only be recovered by action, and the executor could not sue himself, yet in equity

EXECUTOR AND ADMINISTRATOR—*continued.*

the executor was held a trustee of the debt for the benefit of the parties interested in the estate.

Every legatee must obtain the assent of the executor to his legacy before his title as legatee can be complete, and it is the duty of the executor to assent as soon as all the debts and expenses attending the administration have been satisfied, and there is sufficient residue to pay all the legacies.

Legacy to Executor.

A gift to executors is *primâ facie* a gift to them in that character, and where they decline to act, or are incapable of acting, they cannot take the legacy.

However, the mere fact of having taken out probate (in the absence of fraud) will entitle the executor to the gift (*Harford* v. *Browning*, 1 Cox. 302). In fact, an executor may take his legacy provided he proves and *bonâ fide* acts as executor any time during the course of administration (*Angermann* v. *Ford*, 29 B. 349). See also *Lewis* v. *Matthews*, L. R. 8 Eq. 277. Here the executor, abroad at testator's death, sent home a power of attorney under which A. administered the estate. X. (the representative of the executor, who died without proving) was held entitled to the legacy. Where, however, the gift is to "my friend and executor," he will take the gift, though declining to act as executor (*Bubb* v. *Yelverton*, 13 Eq. 131)

Where a legacy is given to A., and if he die in the testator's lifetime, to his executors or administrators, then, in the event of A. predeceasing the testator, A.'s executors will take the legacy as executors for the benefit of A.'s residuary legatees, and not as trustees for his next-of-kin (*Clay* v. *Clay*, 33 W. R. 516).

An annuity to an executor for his trouble, to be paid until a final settlement of the testator's affairs, ceases with the active trusts (*Hull* v. *Christian*, 17 Eq. 546).

Where a testator directed that an annuity should be paid to one of his executors, for his trouble in superintending his concerns, until a final settlement of his affairs should take place, and some time after the death of the testator, a suit was instituted for the administration of the estate, but no receiver was appointed, and some of the assets were still outstanding, it was held the annuity to the executor (who had proved and acted) did not cease on account of the institution of the suit (*Baker* v. *Martin*, 8 Sim. 25).

Executors have a joint and several authority over the personal assets of the testator, and are therefore generally answerable for their own individual acts only, and not for the acts of their co-executors. Hence each can give a valid discharge by his own separate receipt.

It is now laid down, that, though one executor has joined in a receipt, yet whether he is liable shall depend on his acting (*Brice* v. *Stokes*, 11 Ves. 319; *Walker* v. *Symonds*, 3 Swanst. 64).

Executors are not allowed, even with the consent of their co-executors, to take any remuneration by way of commission, brokerage, or salary, without some express provision for that purpose in the will (*Stocken* v. *Dawson*, 6 Beav. 371; *Nicholson* v. *Tuttin* (No. 2), 3 K. & J. 159), nor can they, except under very special circumstances, charge for an agent. Consequently, a bequest to an executor for his trouble in executing the office is a legacy, and liable as such to Legacy Duty.

A solicitor, who is appointed executor, can only charge against the estate his costs, charges, and his expenses out of pocket, and even where there is a provision in the will that he may charge for professional services, he is only

EXECUTOR AND ADMINISTRATOR—*continued.*

entitled to charge for services strictly professional, and not entitled to charge for matters which an executor ought to have done without the intervention of a solicitor (*Moore* v. *Frowd*, 3 M. & Cr. 45; *Cradock* v. *Piper*, 1 Mac. & G. 664; *Burgess* v. *Vinnicombe*, 31 Ch. D. 665). See "Solicitor."

In the case of a will of doubtful construction, the executor, if he desires to avoid personal responsibility, may either have the assets administered in the Chancery Division, under a judgment or order of the Court, obtained on a writ or summons, or he may apply for the opinion and direction of the Court or judge. It seems to be settled that an executor can, on the estate being wound up, claim a release from a residuary, though not from a specific legatee.

1. *Liability for Legacy (and Succession) Duty.*

Legacy Duties are to be paid by executors or administrators (as "the person or persons having or taking the burthen of the execution of the will, or other testamentary instrument or the administration of the personal estate;" so that as regards foreign personalty for which foreign executors are appointed, the English executors would not appear to be liable for Legacy Duty thereon under this section) **on retaining or paying legacies**, and if the duty be not paid before legacies are so retained or discharged, the executors having deducted the same, the amount will be a debt from them to the Crown; and if the executors pay the legacies without deducting the duty, the same will be a debt from both executors and legatees (s. 6 of 36 Geo. 3, c. 52). And where a legatee has received his legacy without deduction of the duty, he is liable to reimburse the executors any duty they are afterwards called upon to pay (*Hales* v. *Freeman*, 1 B. & B. 291; *Foster* v. *Ley*, 2 Bing. N. C. 269; *Bate* v. *Payne*, 13 Q. B. 900). On the other hand, where the legatee has paid the duty to the agent of the executor, the misappropriation of the duty by such agent does not entitle the executor to retain the amount of the duty (*Horn* v. *Coleman*, 26 L. J. Ch. 213). The pending of an administration suit does not relieve executors from their liability to deliver an account of the duty upon any legacies which they have paid (*In re Sammon*, 3 Mee. & W. 381). Where personalty is bequeathed to different persons in succession, not only the original trustees, but also those subsequently appointed are liable (*In re Jones' Trusts*, 21 L. J. R. (Ch.) 566).

Where there is a direct gift to A., charged with an annuity to B., A. is entitled to immediate payment of his legacy, and he, and not the executor who has parted with the fund, is liable for the payment of the duty on the annuity (s. 9 of 36 Geo. 3, c. 52).

Executors, previous to retaining their legacies, must transmit the particulars, with the duty offered, to the Commissioners, under a penalty for neglect (ss. 35, 24, 27, 28 of 36 Geo. 3, c. 52).

Executors must be careful to pay legacies to persons competent to give receipts therefor. A married woman to whom a legacy is given for her separate use, or who comes within the provisions of the Married Women's Property Act, 1882, can alone give a good discharge for the legacy, subject to any settlement affecting the same. Special provision is made by s. 32 of 36 Geo. 3, c. 52, where the legatee is an infant, or is abroad. See "Payment into Court."

Where a testator appoints by will funds comprised in a settlement giving him a general power of appointment, his executors and not the trustees of the settlement are primarily accountable for the duty (*Re Philbrick's Trusts*, 570); but if the trustees should take upon themselves to distribute the property

EXECUTOR AND ADMINISTRATOR—*continued.*

among the appointees, without the intervention of the executors, they would probably be accountable as executors *de son tort*. Executors may distribute any part of the estate, provided they have paid the proportion of the duty which has accrued in respect of such part. In appropriate cases executors are also liable for Succession Duty (16 & 17 Vict. c. 51, ss. 1, 44).

2. *Liability for Estate Duty.*

The expression "**executor**" means the executor or administrator of a deceased person, and includes, as regards any obligation under this part of this Act, any person who takes possession of or intermeddles with the personal property of a deceased person (Finance Act, 1894, s. 22 (1 *d*)).

The expression "executor" means every person who, as executor, nearest of kin, or creditor or otherwise, intromits with or enters upon possession or management of any personal property of a deceased person (s. 23 (11)).

"The executor of the deceased **shall**, to the best of his knowledge and belief, **specify** in appropriate accounts annexed to the Inland Revenue affidavit **all the property** in respect of which Estate Duty is payable upon the death of the deceased" (s. 8 (3)).

The executor shall be **accountable** for the Estate Duty in respect of **all personal property** wheresoever situate of which the deceased was **competent to dispose** at his death (s. 8 (3)).

The executor of the deceased **shall pay** the Estate Duty in respect of all personal property (wheresoever situate) of which the deceased was competent to dispose at his death, **on delivering the Inland Revenue affidavit** (s. 6 (2)).

But he shall **not be liable** for any duty in excess of the assets which he has received as executor, or might but for his own neglect or default have received (s. 8 (3)).

Where the executor **does not know** the amount or value of any property which has passed on the death, he may state in the Inland Revenue affidavit that such property exists, but he does not know the amount or value thereof, and that he undertakes, as soon as the amount and value are ascertained, to bring in an account thereof, and to pay both the duty for which he is or may be liable, and any further duty payable by reason thereof for which he is or may be liable in respect of the other property mentioned in the affidavit (s. 6 (3)).

If the **rateable part** of the Estate Duty in respect of any property is **paid by the executor**, it shall, where occasion requires, be **repaid** to him by the trustees or owners of the property; but if the duty is in respect of real property, it may, unless otherwise agreed upon, be repaid by the same instalments and with the same interest as are in this Act mentioned (s. 9 (4)).

A person authorized or required to pay the Estate Duty in respect of any property shall, for the purpose of paying the duty or raising the amount of the duty when already paid, have **power**, whether the property is or is not vested in him, **to raise the amount of such duty**, and any interest and expenses properly paid or incurred by him in respect thereof, by the **sale or mortgage** of, or a terminable charge on, that property or any part thereof (s. 9 (5)).

The executor **may pay** in like manner the Estate Duty in respect of **any other property** passing on such death, which by virtue of any testamentary disposition of the deceased is under the control of the executor, or, in the case of property not under his control, if the persons accountable for the duty in respect thereof request him to make such payment (s. 6 (2)).

EXECUTOR AND ADMINISTRATOR—*continued.*

As to recovery by executor of rateable part of the Estate Duty, see "Apportionment of Estate Duty."

3. *Liability for Settlement Estate Duty.*

The Settlement Estate Duty leviable in respect of a legacy or other personal property settled by the Will of the deceased shall (unless the Will contains an express provision to the contrary) be payable out of the settled legacy or property in exoneration of the rest of the deceased's estate.

The Settlement Estate Duty leviable in respect of any such legacy or property shall be collected upon an account setting forth the particulars of the legacy or property, and delivered to the Commissioners **by the executor within six months after the death,** or within such further time as the Commissioners may allow (Finance Act, 1896, s. 19).

EXECUTORY INTERESTS

Are statutory future interests, owing their origin to the old system of uses, and which under deeds to take effect as such, must be limited not directly to the grantees but by way of use, and must be restricted to freeholds to which species of property the Statute of Uses only applies.

Under wills, however, they may be limited directly or by way of use, and may be created in freeholds (Statute of Wills, executory devises), leaseholds, or even in chattels (executory bequests).

EXECUTORY TRUSTS.

(*a*) **In Marriage Articles.**

Here the Court will decree a strict settlement in conformity with the presumed intention of the parties.

For example, where it is agreed that real estate of either the intended husband, or of the intended wife, or of both shall be settled upon the heirs of the body of them, or of either of them, in such terms as would, according to the rule in Shelley's case (*q.v.*) give both or either of them an estate tail, thereby enabling both or either of them to defeat the provision intended to be secured for the issue, courts of equity, considering that the object of the articles is to make a provision for the issue, will decree a settlement to be made upon the husband or wife for life only, with remainder to the issue of the marriage successively in tail as purchasers (*Trevor* v. *Trevor*, P. W. 622, *Snell*, 11th ed.).

(*b*) **In Wills.**

Here the Court seeks for the expressed intention of the testator. And if it cannot be gathered that (for example) he meant the words "heirs of the body" or words of similar import to be words of purchase and not of limitation—the Courts of Equity will decree a settlement to be made according to the strict legal meaning of the words used (*Sweetapple* v. *Bindon*, 2 Vern. 536).

An executory devise is not a limitation by way of succession, see "Settlement Estate Duty."

EXEMPTIONS.

(*a*) **Estate Duty.**

1. "Property the interest in which of the deceased was only an interest as holder of an office, or recipient of the benefits of a charity, or as a corporation sole" (Finance Act, 1894, s. 2 (1*b*)).

EXEMPTIONS—*continued.*

2. Property . . . situate out of the United Kingdom, where under the law in force before the passing of the Finance Act, no legacy or succession duty was payable in respect thereof, or would have been but for the relationship of the beneficiaries (s. 2 (2)).
3. Property held by the deceased as trustee for another person, under a disposition not made by the deceased, or under a disposition made by the deceased more than twelve months before his death where possession and enjoyment of the property was *bonâ fide* assumed by the beneficiary immediately upon the creation of the trust and thenceforward retained to the entire exclusion of the deceased or of any benefit to him by contract or otherwise (s. 2 (3)).
4. Estate duty is not payable on property passing on the death of the deceased by reason only of a *bonâ fide* purchase from the person under whose disposition the property passes, or the falling into possession of the reversion on any lease for lives, or the determination of any annuity for lives, where such purchase was made, or such lease or annuity granted, for full consideration in money or money's worth paid to the vendor or grantor for his own use or benefit, or in the case of a lease for the use or benefit of any person for whom the grantor was a trustee (see s. 3 (1)). When any such purchase was made, or lease or annuity granted, for partial consideration in money or money's worth paid to the vendor or grantor for his own use or benefit, or in the case of a lease for the use or benefit of any person for whom the grantor was a trustee, the value of the consideration is allowed as a deduction from the value of the property (see s. 3 (2)).
5. Settled property of every description in respect of which Estate Duty has been paid since the date of the settlement, unless the deceased "was, at the time of his death, or had been at any time during the continuance of the settlement, competent to dispose of such property" (s. 5 (2)); except lands or chattels settled by Act of Parliament or Royal Charter so as to be inalienable (s. 5 (5)).
6. In the case of settled property, where the interest of any person under the settlement fails or determines by reason of his death before it becomes an interest in possession, and **subsequent limitations** under the settlement **continue to subsist**, the property shall not be deemed to pass on his death (s. 5 (3)).

   When through the failure (by the death of the owner) of an intermediate interest in expectancy the ultimate absolute interest in settled property becomes vested in the life-tenant in possession, the absolute interest is a subsequent subsisting limitation under the settlement within s. 5 (3) of the Finance Act, 1894, and no estate duty is payable upon it (*Attorney-General* v. *Wood and others*, 76 L.T. 654; see also "Enlargement of Interest").
7. "The property of common seamen, marines or soldiers who are slain or die in the service of Her Majesty" (s. 8 (1)).
8. Sums of less than £100 which may, under the Friendly Societies Act, 1875, the Savings Bank Act, 1887, and the Acts 26 & 27 Vict. c. 57, 28 & 29 Vict. c. 111, and 31 & 32 Vict. c. 90, be paid to the representatives of the deceased without requiring representation (s. 8 (1)).
9. "Interests in expectancy," the estate duty upon which has been commuted under s. 12.

EXEMPTIONS—*continued.*

10. Survivorship annuities of less than £25 (s. 15 (1)).
11. Pictures, prints, books, manuscripts, works of art, and scientific collections given or bequeathed for national scientific purposes, or to any university, or to any county council, or any municipal corporation, the duty in respect of which has been remitted by the Treasury (s. 15 (2)); and see *post*, Finance Act, 1896 (s. 20 (1)).
12. Estate Duty is not payable on any pension or annuity payable by the Government of British India to the widow or child of any deceased officer of such Government, notwithstanding that the deceased contributed during his lifetime to any fund out of which such pension or annuity is paid (see s. 15 (3)).
13. Advowsons or church patronages which would have been free from Succession Duty under the Succession Duty Act, 1853, s. 24 (s. 15 (4)).
14. Reversionary interests *bonâ fide* sold or mortgaged before Aug. 1, 1894; but which fall into possession after that date so far as concerns the purchaser or mortgagee (s. 21 (3)).
15. Estates under £100 (s. 17).
16. Personal property settled by a **Will or disposition** (*a*) made by a person dying on or before Aug. 1, 1894, in respect of which Probate Duty (including Inventory Duty in Scotland) or Account Duty has been paid or is payable, "unless in either case the deceased was, at the time of his death, or at any time since the will or disposition took effect had been, competent to dispose of the property" (s. 21 (1), and s. 22 (2)) (*b*).
17. Property settled by a husband on a wife, or *vice versâ* before Aug. 1, 1894, and reverting to the settlor (s. 21 (5)). See "Husband and Wife."
18. Scotch entailed estates where Estate Duty and Settlement Estate Duty have been paid, and which the deceased had not absolute power to disentail, s. 23 (16).

Enlargement of Interest (*q.v.*).

19. Where property is settled by a person on himself for life, and after his death on any other persons with an ultimate reversion of an absolute interest or absolute power of disposition to the settlor, the property shall **not be deemed** for the purpose of the principal Act **to pass** to the settlor on the death of any such other person after the commencement of this Part of this Act, by reason only that the settlor, being then in possession of the property as tenant-for-life, becomes, in consequence of such death, entitled to the immediate reversion, or acquires an absolute power to dispose of the whole property (s. 14, Finance Act, 1896). See "Wood Case."
20. Where by a disposition of any property an interest is conferred on any person other than the disponer for the life of such person or determinable on his death, and such person enters into possession of the interest and thenceforward retains possession thereof to the entire exclusion of the disponer or of any benefit to him by contract or otherwise, and the only benefit which the disponer retains in the said property is subject to

(*a*) Where A. (intended wife) and B. (intended husband) settled "wife's fund" upon A. for life, remainder to B. for life, remainder as A. should appoint by will or deed, and A. appointed by will and Probate Duty was paid upon the then value of the fund, the settlement and the will were held to constitute together a "disposition" and the fund passing on B.'s death was held exempt from Estate Duty under this section (*Attorney-General* v. *Dodington*, (1897) 1 Q. B. 722; C. A., (1897) 2. Q. B. 373).

(*b*) A fund is not, however, exempted from Estate Duty under s. 21 (1) by reason of Probate Duty having been paid thereon in a British possession.

EXEMPTIONS—*continued.*

such life or determinable interest, and no other interest is created by the said disposition, then, on the death of such person after the commencement of this Part of this Act, the property shall **not be deemed** for the purpose of the principal Act **to pass** by reason only of its reverter to the disponer in his lifetime (s. 15 (1) Finance Act, 1896).

21. Where the deceased person was entitled by law to the rents and profits of real property (as defined by s. 1 of the Succession Duty Act, 1853, 16 & 17 Vict. c. 51) of his wife, and has died in her lifetime, such property shall not be deemed for the purpose of the principal Act to pass on his death by reason of her then becoming entitled to the property in virtue of her former interest (s. 15 (4) Finance Act, 1896).

Objects of National, Scientific, or Historic Interest.

22. "Where any property passing on the death of a deceased person consists of such pictures, prints, books, manuscripts, works of art, scientific collections or other things not yielding income, as appear to the Treasury to be of national, scientific, or historic interest, and is settled so as to be enjoyed in kind in succession by different persons, such property shall not, on the death of such deceased person, be aggregated with other property, but shall form an estate by itself, and, while enjoyed in kind by a person not competent to dispose of the same, be exempt from Estate Duty; but if it is sold, or is in the possession of some person who is then competent to dispose of the same, shall become liable to Estate duty" (s. 20 (1) Finance Act, 1896).

Settlement Estate Duty.

1. Where the **only life interest** in the settled property after the death of the deceased is that of a **wife or husband** of the deceased (Finance Act, 1894 (s. 5 (1 *a*)).
2. Where the Settlement Estate Duty has been **once paid** during the continuance of the settlement (s. 5 (1 *b*)).
3. On the estate of the deceased, where exclusive of property settled otherwise than by his will, the net value does not exceed £1000 (s. 16 (3)).

(*b*) **Probate Duty** (55 Geo. 3, c. 148; 43 Vict. c. 14; 44 Vict. c. 12).

1. The effects of any common soldier, seaman or marine who shall die in the service of the Queen are exempt (55 Geo. 3, c. 184, sch., Part III.).
2. So also additional inventories in Scotland where the duty on the total estate does not exceed that already paid on a former inventory of the same estate (16 & 17 Vict. c. 59, s. 8).
3. The 18 & 19 Vict. c. 63, s. 31 provides that sums in friendly societies not exceeding £50 may be paid to the next-of-kin of a deceased member without taking out administration in England or Ireland or confirmation in Scotland. This, however, does not prevent probate of a will from being necessary.
4. The 56 Vict. c. 5 (The Regimental Debts Act) provides that representation may be dispensed with where the surplus of the personal effects of any officer or soldier dying on service after payment of the preferential charges referred to in the Act does NOT EXCEED £100.
5. The 28 & 29 Vict. c. 111, s. 6 (The Navy and Marines Property of Deceased Act) provides that representation may be dispensed with where the amount of PAY or PENSION standing to the credit at the time of death

EXEMPTIONS—*continued.*

of any officer, seaman or marine, or any civil officer in the books of the Admiralty does not EXCEED £100.

6. The 31 & 32 Vict. c. 90 provides that representation may be dispensed with, where the arrears of civil pay or pension due at the time of death to any civil servant does NOT EXCEED £100 (s. 1); where the civil and military allowances chargeable to army votes and army prize money do NOT EXCEED £100 (s. 2).
7. So also where deposits in savings banks exclusive of interest do NOT EXCEED £50.
8. And generally where "the estate and effects of the deceased for and in respect of which the probate or letters of administration is or are to be granted" do NOT EXCEED £100 no Stamp Duty is payable. It should be noted that where assets are beyond the jurisdiction of the Court at the time when the right to the duty attaches no Stamp Duty is payable thereon (*Attorney-General* v. *Pratt*, L. R. 9 Exch. 143; *Attorney-General* v. *Hope*, 2 Cl. and Fin. 84).
9. Probate Duty is **not leviable** where the deceased died after Aug. 1, 1894, in respect of property chargeable with Estate Duty (Finance Act, 1894, s. 1).

(*c*) **Account Duty** (44 Vict. c. 12, s. 38; 52 Vict. c. 7, s. 11 (1)).

No *donatio mortis causâ* gift, or disposition INTER VIVOS, voluntary settlement, etc., in favour of any person IF UNDER £100 in value is liable to Account Stamp Duty.

And inasmuch as the parties may, where there is a series of settlements, although the settlor, trustees and beneficiaries in each are identical, bring in a separate ACCOUNT under each settlement, and pay the appropriate duty in respect of the fund thereby settled, without regard to any other settlement or settlements, it follows that the above exemption applies where any particular fund is UNDER £100, although the aggregate value of the settled funds exceed £100; the same principle applies with regard to ESTATE DUTY; where a particular fund does not exceed £10,000 it is exempt from Estate Duty although the AGGREGATE value of the settled funds EXCEEDS £10,000.

Account Stamp Duty is not payable where the property passing is real estate, nor in respect of property passing under a marriage settlement to persons within the marriage consideration.

This duty is **not leviable** where the deceased died after Aug. 1, 1894, in respect of property chargeable with Estate Duty (Finance Act, 1894, s. 1).

(*d*) **Temporary Estate Duty** (52 Vict. c. 7).

Estate Duty is only payable where—

1. The value of property liable to STAMP DUTY EXCEEDS £10,000; and where the grant is taken out, inventory exhibited, or "account" delivered on or after JUNE 1, 1889.

   Where a testator, dying on or after June 1, 1889, directs his personalty, which, exceeding £10,000, pays Estate Duty under the provisions of s. 5, sub-s. 1 of 52 Vict. c. 7, to be invested in the purchase of Real Estate to the use of his son A. for life, with remainders over, and such investment is made during A.'s lifetime, no further Estate Duty will be payable on A.'s death (under the provisions of s. 6) in respect of the succession of the remainderman, for otherwise two "Estate Duties" would have to be borne by the same property.
2. The value of any succession upon the death of any person dying on or

EXEMPTIONS—*continued.*

after June 1, 1889, chargeable with duty under the Succession Duty Act, 1853, and the Customs and Inland Revenue Act, 1888, EXCEEDS £10,000.

3. The value of any succession to REAL PROPERTY under the will or intestacy of any person so dying chargeable with duty under the said Act does NOT EXCEED £10,000; but such value TOGETHER WITH the value of ANY OTHER BENEFIT taken by the successor under such will or intestacy EXCEEDS £10,000.

4. This duty is **not leviable** where deceased died on or after June 1, 1896 (s. 7); or where he died after Aug. 1, 1894, in respect of property chargeable with the new Estate Duty (Finance Act, 1894, s. 1).

(*e*) **Legacy Duty** (36 Geo. 3, c. 52; 45 Geo. 3, c. 28; 55 Geo. 3, c. 184, sch., Part III).

1. Bequests to a HUSBAND or WIFE of the deceased, or to any member of the ROYAL FAMILY (55 Geo. 3, c. 184, sch., Part III.).

2. Bequests of books, prints, pictures, statues, works of art, or other specific articles to a corporation, society, or endowed school for the purpose of preservation and not of sale (55 Geo. 3, c. 184, sch., Part III., and 39 Geo. 3, c. 73).

In practice this exemption is conceded to gifts to bodies not incorporated by law, provided it is clearly established that such gifts are for the purpose of preservation, and not of sale.

3. Any legacy, residue, or share of residue (where the deceased died before JUNE 1, 1881), which does not amount to £20.

Where a legacy "under £20" is directed by a testator dying before said date, to be paid with accumulations to a legatee at a period deferred from the testator's death, and such legacy with accumulations amounts to or exceeds £20, the same is liable to duty.

Note that s. 42 of 44 Vict. c. 12, abolishes the exemption of pecuniary legacies, or shares of residue under the will or intestacy of any person dying after JUNE 1, 1881, by reason of their being under £20 in amount or value.

4. (i) The whole personal estate is exempt from Legacy Duty where the gross value (including foreign assets, if any) does not amount to £100 (43 Vict. c. 14, s. 13), and where the deceased died on or after March 24, 1880. In practice this exemption is conceded where the value of the whole estate is reduced by debts below £100, whatever the date of death. And where the value (net) of the whole estate (real and personal) is under £100, no claim is made for duty on the proceeds of sale of the real estate.

(ii) Where the net value of the property, real and personal, of any testate or intestate dying on or after Aug. 2, 1894, in respect of which Estate Duty is payable on the death of the deceased (**exclusive of property settled otherwise than by the will of the deceased**) does **not exceed £1000,** such property is **exempt from Legacy,** Succession, and Settlement Estate Duty (Finance Act, 1894, s. 16 (3)).

This exemption is extended in practice to donations *mortis causâ*, and deceased's severable share of property held in joint tenancy.

But to obtain such relief the Estate Duty must have been actually paid on the whole property (including interests in expectancy and real estate), see (*f*) 8, *infra.*

EXEMPTIONS—*continued.*

5. Duty at the rate of 1 per cent. (or 1½ per cent.) is not payable in respect of any legacy, residue, or share of residue, including donations *mortis causâ*, payable out of, or consisting of any estate or effects, according to the value whereof duty shall have been paid on the affidavit or inventory or account in conformity with the provisions of 44 Vict. c. 12, s. 41 (*a*); or on which Estate Duty has been paid **under the same disposition or devolution** under which the claim for Legacy (or Succession) Duty arises (Finance Act, 1894, s. 1).

   It should be observed that (as regards Probate Duty) the terms of this exemption do not apply to foreign moveable property, or to money arising from the sale of real estate directed by will to be sold, which were not liable to Probate Duty; but see "Partnership."

6. MONEY left for payment of Legacy Duty (s. 21 of 36 Geo. 3, c. 52).
7. Leaseholds (16 & 17 Vict. c. 51, ss. 1 and 19).
8. The whole personal estate is exempt from Legacy Duty where the GROSS value (including foreign personalty, if any) does NOT EXCEED £300, and where the fixed duty of 30s. has been paid in conformity with the provisions of ss. 33 and 34 of 44 Vict. c. 12, and where the deceased died on or after JUNE 1, 1881 (s. 36).
9. RESIDUE not exceeding £100 administered under the 28 & 29 Vict. c. 111 (The Navy and Marine Property of Deceased Act), without representation being taken out.
10. Any legacy or residue or share thereof bequeathed out of the estate and effects of a deceased depositor in any SAVINGS BANK in England or Ireland, where the whole of such estate and effects does NOT EXCEED £50 (26 & 27 Vict. c. 87, s. 42).
11. Legacies and monies payable out of, or arising from the sale of real estate, where the testator died, after JULY 1, 1888, are chargeable with the duties under the Succession Duty Act, 1853, and the additional duties under 51 Vict. c. 8, s. 21, as "successions to personal property," the duties thereon no longer being levied and paid under the Legacy Duty Acts.

    Such legacies, etc., remain legacies, however, and are held liable to all the laws incidental to legacies, although the duties are to be paid on them as if they were successions to personalty.

12. The 5 & 6 Vict. c. 82, s. 28, provides that any legacy given for the maintenance of poor children in Ireland, or to be applied in the support of any charitable institution in Ireland, or for any purpose merely charitable (*i.e.* in Ireland) is exempt from Legacy Duty.

    This exemption in respect of bequests for charitable purposes in Ireland extends only to gifts of property in Ireland by a testator DOMICILED in Ireland (*Attorney-General* v. *Hope's Executors*, 2 Ir. C. L. R. 358; *Attorney-General* v. *Delaney*, 10 Ir. C. L. R. 104).

    Gifts for charitable purposes which may be performed out of Ireland are not within the exemption, and where the charitable purpose is not stated, but is the subject of a SECRET TRUST, the exemption does not apply (*Attorney-General* v. *Cullen*, 14 Ir. C. L. R. Exch. 137).

(*a*) On B.'s death in 1893, without issue male, his executors became entitled to a fund under will of A. (*ob*, 1854), and upon which B. had paid Legacy Duty at the rate of 1 per cent. in respect of his life interest therein. Held, the executors must pay duty at 1 per cent. upon the corpus, and the case did not come within s. 41 (*Kenlis* v. *Hodgson* [1895] 2 Ch. 458).

EXEMPTIONS—*continued.*

A gift for the promotion of art in Ireland is within the exemption (*Attorney-General* v. *Bagot*, 13 Ir. C. L. R. Exch. 48).

In a recent case it was held that a legacy for the repose of testator's soul in a public church in Ireland to be open to the public during the celebration of any such masses is not exempt from Legacy Duty (*Perry* v. *Tuoney*, 21 L. R. Ir. 480; 37 W. R. (Dig.) 105).

(*f*) **Succession Duty** (16 & 17 Vict. c. 51; 51 Vict. c. 8, s. 21).

1. Any property subject to Legacy Duty (s. 18 of 16 & 17 Vict. c. 51).
2. Any succession which if it were a legacy bequeathed to the successor by the predecessor would be exempted (*i.e.* expressly exempted, see *Attorney-General* v. *Fitzjohn*, 2 H. & N. 475) from the payment of Legacy Duty under the Legacy Duty Acts (s. 18).
3. "Any monies applied to the payment of the duty on any succession according to any trust for that purpose" (s. 18).
4. Where the aggregate amount (the principal value of the taxable succession) of the succession or successions when derived on any death from the same predecessor is UNDER £100 (s. 18). See "UNDER £100."
5. Any succession which, as estimated according to the provisions of the Succession Duty Act, shall be of less value than £20 in the whole (s. 18). Legacies charged on real estate, though chargeable as successions to personalty by 51 Vict. c. 8, s. 21, yet remain legacies, and therefore do not come within this exemption by reason of their being under £20 in amount. This exemption is abolished in the case of a succession by a death on or after JUNE 1, 1889 (52 Vict. c. 7, s. 10, sub-s. 2).
6. Duty at the rate of 1 per cent. (or 1½ per cent.) is not payable in respect of any succession to property according to the value whereof duty shall have been paid on the affidavit or inventory or account in conformity with the 44 Vict. c. 12 (s. 41), or in respect of property on which Estate Duty has been paid (Finance Act, 1894, s. 1). See also "Haygarth Case."
7. Succession to any property rightly included in an affidavit or inventory or account where the FIXED DUTY of 30s. has been paid in conformity with the provisions of ss. 33 and 34 of 44 Vict. c. 12 (s. 36).
8. Where the net value of the property real and personal (exclusive of property settled other than by the will of the deceased) in respect of which Estate Duty is payable on the death of a deceased testate or intestate dying on or after Aug. 2, 1894, does **not exceed £1000** (Finance Act, 1894, s. 16 (3)).

This exemption is not conceded where the parties elect to pay Estate Duty on the free real estate by instalments (s. 6 (8)) or to defer payment on interest in expectancy until it falls into possession (s. 7 (6)).

9. No person shall be charged with duty under this Act in respect of any interest surrendered by him or extinguished before the time appointed for the commencement of this Act (s. 18 of 16 & 17 Vict. c. 51).
10. Exemption from the ADDITIONAL RATES imposed by 51 Vict. c. 8, s. 21.
    (*a*) Leaseholds (held to include leaseholds for lives) passing to a successor by will or devolution by law, by the operation of the PROVISO at the end of s. 21, also personalty directed to be invested in the purchase of real estate; and this whether the Probate Duty on the leaseholds, or personalty, has been accounted for prior to or since the 44 Vict. c. 12.

EXEMPTIONS—*continued.*

(*b*) Property included in an ACCOUNT according to the value whereof duty is payable under the 44 Vict. c. 12.

(*c*) Heritable securities on which Inventory Duty has been paid pursuant to 23 & 24 Vict. c. 80.

Inasmuch as the proviso at the end of s. 21 was inserted with the view of preventing a claim to the additional duty on the top of Stamp Duty, the exemption from such additional duty is extended in practice to all successions to personal property on which Stamp Duty has been paid.

For Example—

1. Personalty bequeathed to A. and B. as joint tenants, where either (A.) dies without receiving his share or otherwise severing the joint tenancy, the beneficial interest thereby accruing to the survivor (B.) is a succession chargeable to duty at the lower rates.
2. So also in respect of personalty over which a testator dying domiciled abroad has exercised a general power of appointment.
3. So also as to personalty bequeathed upon such trusts as A. shall appoint.
4. So also as to personalty directed by a testator dying abroad to be invested in British securities, and the income to be paid to A. for life (no duty payable), and on A.'s death (a succession) the *corpus* to be paid to B.

(*d*) Cessers of determinable charges, *e.g.* leases for life, leases for years determinable on lives, jointures, rent-charges, dower and other annuities for life are also exempt from the additional rates unless the ORIGINAL SUCCESSION took effect after JULY 1, 1888, cessers of such charges being regarded as part of the original succession, payment of which is deferred (s. 20 of 16 & 17 Vict. c. 51).

With reference to the provisions of s. 21 (2) of 51 Vict. c. 8, it is held that leaseholds and proceeds of sale of leaseholds directed to be sold are not to be considered as included in the term "real or heritable property."

(*e*) Where a testator dies before JULY 1, 1888, and a tenant for life (donee of a power to charge the realty with portions for the benefit of his younger children) of certain real estate dies after date, having exercised the power, then where the testator charged, and the tenant for life could only appoint, Legacy Duty at the lower rates (and not Succession Duty at the higher rates) will be payable.

(*f*) **Not leviable on property in respect of which Estate Duty is chargeable** (Finance Act, 1894, s. 1).

This exemption is extended in practice to cases (i.) where the principal value is exactly £100 (Estate Duty (s. 17) is only chargeable where amount **exceeds £100**), and (ii.) where the Estate Duty has been remitted under s. 15 (2) on gifts for national or quasi-national purposes.

EXONERATION. See "Locke King's Act."

EXPECTANCY, Estates in.

Estates in expectancy may be said to comprise the following interests—

Reversions,

EXPECTANCY—*continued.*

Remainders (vested or contingent),
Executory interests (vested or contingent).
See further "Interest in Expectancy."

EXPENSES.

Funeral expenses (*q.v.*) are a deduction against Estate Duty (Finance Act, 1894, s. 7 (1)) and Probate Duty (s. 28 of 44 Vict. c. 12).

Funeral, testamentary and executorship expenses, are a deduction against Legacy Duty.

Where the Commissioners are satisfied that any **additional expense** in administering or in realizing property has been incurred by reason of the property being situate out of the United Kingdom, they may make an allowance from the value of the property (for Estate Duty) on account of such expense not exceeding five per cent. on the value of the property in any case (Finance Act, 1894, s. 7 (3)).

EXTINCTION OF DETERMINABLE CHARGES. See "Cesser."

F.

FALKLAND ISLANDS.

Date of Order in Council (Finance Act, 1894), Oct. 3, 1895.
Death Duty imposed by "The Probate Ordinance, 1895."

	Scale.
Under £50	2*s.*
„ £100	4*s.*
„ £200	12*s.*
„ £500	2 per cent.
£500 and over	2½ „

FALLING IN OF LEASE. See "Leaseholds."

"FAMILY."

The meaning of this word in a will varies with the context. It is generally construed in a limited sense, and to mean children (*Barnes* v. *Patch*, 8 Ves. 604). Where, however, there are no children, it may, where personal property is given, mean "next-of-kin" (*Re Maxton*, 4 Jur. N.S. 407).

Estate Duty.

Property is said to pass by a death out of the deceased's "family," when it "passes . . . to some person other than the wife or husband, or a lineal ancestor or lineal descendant of the deceased" (Finance Act, 1894, s. 4 (proviso)).

FATHER.

Chargeable to Legacy Duty at the rate of 1 per cent. (55 Geo. 3, c. 184, sch., Part III.), and to Succession Duty at the rate of 1 per cent. (s. 10 of 16 & 17 Vict. c. 51),

FATHER—*continued.*

and 1½ per cent. (s. 21 of 51 Vict. c. 8), the latter rate being imposed where the succession opens upon a death on or after July 1, 1888, but see s. 41 of 44 Vict. c. 12 (June 1, 1881) as to exemption in respect of property on which Probate (or Account) Duty has been paid; s. 1 of Finance Act, 1894, as to exemption in respect of property on which Estate Duty has been paid.

When a child dies intestate without wife or child, leaving a father, the father is entitled to, and to the administration of, the personal estate of the intestate as next-of-kin, exclusive of all others. Where, however, the deceased child left a widow and father, but no child, the personal estate would go in moieties between the widow and father. See "Lineals."

FELON.

Could not dispose of property forfeited; otherwise capable of making a will. By 33 & 34 Vict. c. 23, which abolished forfeiture and escheat for treason, felony, and suicide, all the real and personal property, including choses in action, to which the convict was at the time of his conviction, or shall afterwards become entitled, vests in an administrator appointed under the Act (s. 10). The wife of a felon, as regards property vested in her since her husband's conviction, is a *feme sole* for testamentary purposes.

FIJI.

Date of Order in Council (Finance Act, 1894), Aug. 24, 1895.
Death Duty imposed by "The Stamp Ordinance, 1882."

	Scale.
	£
Lineals, not exceeding	100 .. .. .. Nil.
„ „	1000 .. .. .. 1 per cent.
„ „	5000 .. .. .. 1½ „
Over	5000 .. .. .. 2 „
Collateral relations, not exceeding	100 .. .. .. Nil.
„ „ „ ..	1000 .. .. .. 2½ per cent.
„ „ „ ..	5000 .. .. .. 3 „
Over	5000 .. .. .. 4 „
Strangers in blood, not exceeding	100 .. .. .. Nil.
„ „ „ ..	1000 .. .. .. 5 per cent.
Over	1000 .. .. .. 10 „

Exemptions.

Where the beneficiaries are the husband or wife, or religious, charitable, or educational corporations.

FINANCE ACTS, 1894, 1896, 1898. See Appendix.

FINES.

1. *Leaseholds.*

Fines received by a successor for the renewal of lease, or for grant of a reversionary lease, in respect of property, which, at the time of his becoming entitled thereto in possession, was subject to a beneficial lease, are liable to

FINES—*continued.*

Succession Duty, the predecessor being the person from whom the successor derived title (s. 25 of 16 & 17 Vict. c. 51). In the case, however, of an immediate gift *inter vivos* of property subject to a beneficial lease for life, although Succession Duty would be payable upon its determination by force of the provisions of s. 5, yet there would appear to be no claim for duty under s. 25, where the donee, before such determination, either renewed the lease or granted a reversionary lease in consideration of a premium (Hanson, 3rd. ed., p. 310).

Where a person succeeds to real property held for lives under a renewable lease, no deduction can be taken in respect of any fine he may be prospectively liable to pay in order to obtain renewal.

2. *Renewable Leaseholds.*

Where leaseholds are given for life with remainders over, in the absence of directions as to the payment of the fine for renewal, the Court will apportion the same between the tenant-for-life and the remainderman according to their respective interests.

Where the tenant-for-life derives no interest from the renewal, the remainderman pays the amount of the fine paid by the tenant-for-life plus compound interest at 4 per cent. to the date of his death, and simple interest afterwards.

Where, however, the tenant-for-life lives long enough to derive an interest from the renewal, the remainderman pays the proportionate part of the fine attributable to the benefit he derives from the renewal (see Theobald, 4th. ed.).

3. *Copyholds.*

Upon every descent of a copyhold estate a fine is due to the lord from the heir upon his admission, as a consideration for a renewal of a grant. The lord is also entitled to fines upon all voluntary grants, upon the admission of tenants by the curtsey, the freebench, and indeed upon alienation generally, the only exception being in case of bankruptcy.

The admission of one of several joint tenants or coparceners is the admission of all; but the fine payable in the case of joint tenants, though a single one in a sense, is increased by the number of the tenants. For example, where copyholds are devised to three trustees, two years' value is paid for the first life, half of that on the second, and a half of that half on the third.

Tenants in common, however, are admitted severally, and the fine is apportioned according to the share of each.

The admission of a tenant-for-life is generally deemed the admission of the remainderman, by whom no fine is paid upon admission, unless by special custom.

The fines so payable upon admittance may be fixed or arbitrary. Fines are said to be arbitrary when the sum payable depends upon the will and pleasure of the lord or other person having a right to assess it. But two years' improved value of the land (after deducting quit-rent) has been in practice decided to be a reasonable fine on alienation or descent, and no more is allowed to be taken except under special circumstances.

In estimating the value of a copyholder's succession a deduction can be taken in respect of fines actually paid (s. 28). A deduction is also allowed in respect of the consideration paid for compulsory (not for voluntary) enfranchisement. See "Copyholds."

FIXED DUTIES. [30*s.*: 50*s.*].

Probate Duty (44 Vict. c. 12, ss. 33, 34, 35).

33.—(1.) Where the whole personal estate and effects of any person dying on or after June 1, 1881 (inclusive of property by law made such personal estate and effects for the purpose of the charge of duty and any personal estate and effects situate out of the United Kingdom), without any deduction for debts or funeral expenses, shall not exceed the value of £300, it shall be lawful for the person intending to apply for Probate or Letters of Administration in England or Ireland, to deliver to the proper officer of the Court, or to any officer of Inland Revenue duly appointed for the purpose, a notice in writing in the prescribed form, setting forth the particulars of such estate and effects, and such further particulars as may be required to be stated therein, and to deposit with him the sum of 15*s.* for fees of Court and expenses, and also, in case the estate and effects shall exceed the value of £100, the further sum of **30s.** for Stamp Duty.

(2.) If the officer has good reason to believe that the whole personal estate and effects of the deceased exceeds the value of £300, he shall refuse to accept the notice and deposit until he is satisfied of the true value thereof.

(3.) The principal registrars of the Probate, Divorce and Admiralty Division of the High Court of Justice in England, and of the Probate and Matrimonial Division of the High Court of Justice in Ireland, in communication with the Commissioners of Inland Revenue, shall prescribe the form of notice, and make such regulations as may be necessary with respect to the transmission of notices by officers of Inland Revenue, the steps to be taken for the preparation and filling up of forms and documents, and generally all matters which may be necessary so as to authorize the grant of Probate or Letters of Administration.

(4.) Officers of Inland Revenue are hereby empowered to administer all necessary oaths or affirmations, and in the case of Letters of Administration, to attest the bond and accept the same on behalf of the President or Judge of the Division.

(5.) Where the estate and effects shall exceed the value of £100, the Stamp Duty payable on the affidavit for the Commissioners of Inland Revenue shall be the fixed duty of 30*s.* and no more.

34.—(1.) The Intestates Widows and Children (Scotland) Act, 1875, and the Small Testate Estate (Scotland) Act, 1876, as amended by the Sheriffs' Court (Scotland) Act, 1876, shall be extended so as to apply to any case where the whole personal estate and effects of a person dying on or after June 1, 1881, without any deduction for debts or funeral expenses, shall not exceed the value of £300 whoever may be the applicant for representation, and wheresoever the deceased may have been domiciled at the time of death, and the fees payable under Schedule C of each of the two first-mentioned Acts shall not exceed the sum of 15*s.*, inclusive of the fee of 2*s.* 6*d.* to be paid to the commissary clerk or sheriff clerk.

(2.) In any such case where the estate and effects shall exceed the value of £100, the Stamp Duty payable on the inventory shall be the fixed duty of 30*s.*, and no more.

FIXED DUTIES—*continued.*

35. Where representation has been obtained in conformity with either of the two preceding sections, and it shall be at any time afterwards discovered that the whole personal estate and effects of the deceased were of a value exceeding £300, then a sum equal to the Stamp Duty payable on an affidavit or inventory in respect of the true value of such estate and effects shall be a debt due to Her Majesty from the person acting in the administration of such estate and effects, and no allowance shall be made in respect of the sums deposited or paid by him, nor shall the relief afforded by the next succeeding section be claimed or allowed by reason of the deposit or payment of any sum.

36. The payment of the sum of **30s.** for the fixed duty on the affidavit or inventory in conformity with this Act shall be deemed to be in full satisfaction of any claim to legacy duty or Succession Duty in respect of the estate or effects to which such affidavit or inventory relates.

Estate Duty (Finance Act, 1894).

Where the **gross value** (*a*) of the property real and personal on which Estate Duty is payable on the death of the deceased exclusive of (*b*) property settled otherwise than by the will of the deceased **exceeds £100, but does not exceed £300,** a fixed duty of **30s.** *may be* paid, and where it **exceeds £300 but does not exceed £500,** a fixed duty of **50s.** *may be* paid (*c*). Where the fixed duty of 30*s.* or 50*s.* has been paid, and it turns out that the gross value of the property exceeded £500, the *ad valorem* duty according to the true value is payable, and the fixed duty, unless wrongly paid under a misunderstanding, is forfeited. Where 30*s.* has been paid and it is discovered that 50*s.* should have been paid, the difference only is payable (s. 16 (1) embodying and extending the Customs and Inland Revenue Act, 1881 (44 Vict. c. 12), s. 35).

FOREIGN DOMICILE. See "Domicile."

FOREIGN PROPERTY AND FOREIGNER.

Liability of to Death Duties.

1. **Immoveables** (including leaseholds) not liable to any Death Duty; nor any legacy or annuity charged thereon, nor the proceeds of sale thereof when directed to be sold, even though the owner dies domiciled in this country; unless involved in a partnership (*q.v.*); but see "Succession Duty."

A debt secured by a mortgage of land in a foreign country is moveable, not immoveable, property: it is a personal debt with an accessory right to resort to the land. *Re Lawson*, (1896) 2 I. R. 418.

(*a*) No deduction can be taken for funeral expenses, debts or incumbrances, except ancestral mortgages.

(*b*) But inclusive of (i.) property of which deceased was "competent to dispose," and (ii.) money which he had a general power to charge on real estate, and which—(i.) and (ii.)—were respectively disposed of and charged by his will; (iii.) interests in expectancy; for the value of an interest in expectancy (*q.v.*) must be taken into account as an asset with a view to the limits, £300, or £500 (or £1000, s. 16 (3)). Not, however, inclusive of free moveables situate out of the United Kingdom, where deceased dies domiciled out of the United Kingdom.

(*c*) The provisions of the sections 33, 35, & 36 of 44 & 45 Vict. c. 12 (*supra*)—relating to the obtaining of representation to the deceased, where the gross value of his personal estate does not exceed £300—shall apply, with the necessary modifications, where such gross value does not exceed £500 (s. 16 (1)).

FOREIGN PROPERTY AND FOREIGNER—*continued.*

An English legatee of a share of the proceeds of sale of a West Indian plantation, which was devised by an English testator, after the expiration or failure of certain prior interests, in trust for sale and division of the proceeds, died domiciled in England, while those entitled to prior life interests were still living. It was held that the share was an English and not a foreign asset, and Probate Duty was consequently payable thereon.

Sudeley (Lord) v. *Attorney-General*, (1897) A. C. 11, applied and followed; *Smyth re, Leach* v. *Leach*, 46 W. R. 104.

2. **Moveables.**

i. *Liability to Estate Duty.*

Not chargeable with Estate Duty where the deceased was the owner and was domiciled *out* of the United Kingdom at the time of his death. It is chargeable where the deceased was the owner and was domiciled *in* the United Kingdom at the time of his death. It is also, speaking generally, chargeable where the deceased was only interested for life, and at his death the property formed the subject of a British trust or was vested in a British trustee (Finance Act, 1894, s. 2 (2)).

Grant of representation unnecessary, however, where a person dying domiciled abroad insures in a British Insurance Company (47 & 48 Vict. c. 52, s. 11; 52 & 53 Vict. c. 42, s. 19); but the moneys are, in practice, held liable to Estate Duty. Estate Duty is not leviable on foreign policy moneys, unless payable in the United Kingdom. Otherwise, where vested in a British trustee (Finance Act, 1894, s. 2 (2)).

Foreign debts (that is, due to persons resident out of the United Kingdom, and not contracted to be paid in the United Kingdom, and not charged on property within the United Kingdom) must be deducted in the first instance against foreign assets. Foreign land is only liable to such debts as would be cast upon it by the law of the country (*Harrison* v. *Harrison*, 8 Ch. 342).

Foreign creditors appear to be entitled to dividends *pari passu* with English creditors (*Re Kloebe*, 28 Ch. D. 175) (*a*).

The duty is payable by the executor, s. 6 (2), who must recover it from the trustees or owners under s. 9 (4) (*b*).

As to deduction against Estate Duty for expenses of administering foreign personalty, see "Expenses."

ii. *Liability to Probate Duty.*

"Where the assets are beyond the jurisdiction of the Court when the right to the Probate Duty attaches, duty is not payable thereon," *per*

(*a*) "Therefore if a man dies domiciled in England, possessing assets in France, the French assets must be collected in France, and distributed according to the law of France. If the French creditors are entitled according to that law to be paid in priority, that rule must be observed because it is the *lex fori*, and for no other reason. . . . No doubt in a case in which French assets were distributed so as to give French creditors, as such, priority, in distributing the English assets the Court would be astute to equalize the payments, and take care that no French creditors should come in and receive anything till the English creditors had been paid a proportionate amount. But subject to that, which is for the purpose of doing what is equal and just to all the creditors, I know of no law under which the English creditors are to be preferred to foreigners" (*Per* Pearson, J., in this case).

(*b*) Where, however, the foreign personalty passes under a distinct foreign will, and comes under the sole control of a foreign executor (not identical with the English executor), Estate Duty is not, in practice, demanded from such English executor.

FOREIGN PROPERTY AND FOREIGNER—*continued.*

Kelly, C.B., in *Attorney-General* v. *Pratt* (L. R. 9 Ex. 140). See further, "Assets," "Locality."

iii. *Liability to Legacy Duty.*

This depends wholly upon the domicile of the owner at the time of his death, the local situation of the property being immaterial (*Re Ewin*, 1 Cr. & Jerv. 151; *Thomson* v. *Advocate-General*, 13 Sim. 153, 12 Cl. & F. 1). Exempt, if owner dies domiciled abroad, whether the property English or foreign.

iv. *Liability to Succession Duty.*

Exempt if owner dies domiciled abroad, whether the property English or foreign; but liable—

(*a*) Where the property is in this country, and the owner has disposed of the same by virtue of a general power of appointment for that purpose.

(*b*) Where the persons entitled are so entitled under an English trust or settlement, and in virtue of English law. See "Domicile."

v. *Liability to Account Stamp Duty.*

Liable where the property is so disposed of as to come within the jurisdiction of the British Courts.

Generally—

Where the will of F. (foreigner) disposes of personalty in this country, the will must be proved here, before F.'s executor can deal with the property; and though the only personalty here is a debt which the executor seeks to recover, the will must be proved, or an administrator *ad litem* appointed by the Court.

Where F. dies domiciled in a foreign country, the Court will be guided by the law of that country in deciding on the validity of the will, and it must be satisfied that the will is valid, or that the foreign Court has given effect thereto; and that F. was domiciled there.

The Court will, in general, make the grant to F.'s personal representative under the law of the foreign country.

Where the deceased is a British subject, dies domiciled in a foreign country, and disposes by will of property in England, the execution of the will is regulated by Lord Kingsdown's Act (24 & 25 Vict. c. 114).

Foreign bonds will not include Colonial bonds (*Hull* v. *Hill*, 4 Ch. D. 97).

A bequest to a foreign charity is valid (*Re Geck*, 69 L. T. 819).

Not so, a bequest of proceeds of English realty to be laid out in the purchase of land for a foreign charity (*Curtis* v. *Hatton*, 14 Ves. 537).

A. makes a bequest of money to be laid out in the purchase of land in Scotland. Valid, if good according to Scotch law, although to be settled to uses void for remoteness in England (*Fordyce* v. *Bridges*, 2 Ph. 497, 515).

And where leaseholds in England are disposed of by a foreign will, the limitations are not valid if they infringe the rules relating to perpetuities and accumulations (*Freke* v. *Lord Carbery*, 16 Eq. 461).

An Irish grant or a Scotch confirmation has, on being resealed in England, the same force and effect in England as an English grant. As to extension of Colonial grant to England, see "Resealing."

FORGIVENESS OF DEBT.

A legacy chargeable with duty (*Attorney-General* v. *Holbrook*, 3 Yo. & Jer. 114).

FORMS IN USE.

I. *For the Payment of Death Duties.*

Estate Duty (Finance Act, 1894).

"B–2."—Inland Revenue Affidavit for Probate or Administration: To be used where the gross principal value of the property, real and personal, in respect of which Estate Duty is leviable on the death of the deceased, exclusive of property settled otherwise than by the will of deceased does not exceed £500 (except where the *gross* value exceeds £100 but the *net* value does not exceed £100), *and*, if any Estate Duty is payable thereon, the fixed duty of 30*s.* or 50*s.* under s. 16 of the Finance Act, 1894, is to be paid.

NOTE.—Where in the circumstances of the case the *ad valorem* Estate Duty in respect of the net estate is less than the fixed duty, and it is desired to pay the smaller duty, the Form "A–3" or "A–4," whichever is appropriate, should be used, and not the Form "B–2."

"A–4."—Ditto: To be used where the property in respect of which Estate Duty is leviable consists EXCLUSIVELY of personal property situate in the United Kingdom, and passing under the deceased's will or intestacy; *except* where the *net* value exceeds £100 but the *gross* value does not exceed £500, and the fixed duty of 30*s.* or 50*s.* is to be paid.

"A–3."—Ditto: To be used where Form "A–4," "B–2," "Y–1" or "Z–1," is not applicable.

Where the deceased died *before* Jan. 1, 1898, the Forms "B—1" and "A—1" replace the Forms "B—2" and "A—3."

Where the deceased died *after* Aug. 1, 1894.

No. 16.—Summary of Duty and Interest: to accompany Form "A–4."

No. 17.—Summary of Duty and Interest: to accompany Form "A–3" or "A–1."

*"Y–1."—Inland Revenue Affidavit for Probate or Administration: To be used where the deceased died domiciled abroad, and no property situate in the United Kingdom passed at his death within the meaning of the Finance Act, 1894, but a grant is required in respect of assets which have since been transmitted to this country.

*"Z–1."—Ditto: To be used where no property chargeable with Estate Duty passed on the death of the deceased, and the grant is solely in respect of property of which the deceased was trustee only.

"A–5."—Ditto: To be used where a second or subsequent grant is required in respect of property which was within the operation of a previous grant. Where it was not so, the same Form should be used as for an original grant.

"D–1."—(In duplicate)—Corrective Affidavit.

"C–1."—(In duplicate)—Original "Account" of property which passed at the death, but the Estate Duty whereon was not paid on the Inland Revenue Affidavit.

"D–2."—(In duplicate)—Corrective "Account."

"C–2."—(In duplicate)—For "Settlement Estate Duty" on settled property.

"C–3."—For instalments of Estate Duty and Settlement Estate Duty.

"A–2."—Instructions as to Estate Duty and Settlement Estate Duty.

*No. 20.—(In duplicate)—For Duty payable in Expectancy. See under No. 19 below.

*No. 22.—For small estates under £100 in value, where money is deposited in a Savings Bank or due by a Friendly Society, and a certificate of exemption from duty is required, to obtain payment of the money.

FORMS IN USE—*continued.*

Legacy Duty.

No. 1.—For specific legacies. For pecuniary legacies payable out of personal estate. For pecuniary legacies payable out of real estate or the proceeds of sale thereof, where the deceased died prior to July 1, 1888. For pecuniary legacies payable out of a blended fund of personal estate and real estate directed to be sold, or out of real estate in aid of personal estate, where the deceased died prior to July 1, 1888, or after Aug. 1, 1894. For shares of residue, where the amount of the residue has been arrived at by a general account on the Form No. 3, and (in duplicate) for an account supplemental to that account. (See No. 11.)

No. 2.—For instalments of Legacy Duty on annuities. (See No. 12.)

No. 3.—(In duplicate)—For general residuary accounts.

No. 8.—(In duplicate)—For the proceeds of sale or principal value of real property directed by will to be sold.

No. 11.—For pecuniary legacies and shares of residue when payable out of a blended fund arising from real estate directed to be sold and personal estate, or out of real estate in aid of personal estate. To be used only where the deceased died after June 30, 1888, and before Aug. 2, 1894.

No. 12.—For instalments of duty on annuities where the annuities are payable out of a blended fund arising from real estate directed to be sold and personal estate, or out of real estate in aid of personal estate, and where the deceased died after June 30, 1888, and before Aug. 2, 1894.

Succession Duty.

No. 1.—For pecuniary legacies payable wholly out of real estate or the proceeds of sale thereof, where the deceased died on or after July 1, 1888.

No. 2.—For instalments of duty on annuities charged wholly on real estate by the will of any person dying on or after July 1, 1888.

No. 4.—(In duplicate)—For personal property under settlement (including money charged upon or arising from the sale of real property, and the proceeds of sale of church patronage) where the property is at once taken absolutely, or by different persons in succession all liable to duty at the same rate, and the duty is chargeable upon the capital. (See also No. 1.)

No. 5.—(In duplicate)—For personal property under settlement chargeable by way of annuity, including annuities charged on real property by deed.

No. 6.—(In duplicate)—For real property, including leaseholds, except where Form No. "6-1" is applicable.

No. 6-1.—(In duplicate)—For real property, including leaseholds, where the deceased died after Aug. 1, 1894, and the successor is **competent** to **dispose** of the property within the meaning of 57 & 58 Vict. c. 30.

No. 7.—For the second and subsequent instalments of duty on real and personal property; to follow the Form No. 6.

No. 7-1.—For the second and subsequent instalments of duty on real and personal property; to follow the Form No. 6-1.

No. 8.—(In duplicate)—For the proceeds of sale or principal value of real property directed to be sold or sold under a power. (See also "No. 8" under "Legacy Duty.")

No. 9.—(In duplicate)—For the cesser of terminable charges upon real property.

FORMS IN USE—*continued.*

No. 10.—(In duplicate)—For the proceeds of sale of timber.

No. 11.—See "No. 11" under "Legacy Duty."

No. 12.—See "No. 12" under "Legacy Duty."

*No. 19.—(In duplicate)—For duty payable in expectancy. This Form is not supplied until a commutation has been agreed to. Application should be made in writing to the Controller of Legacy and Succession Duties, Somerset House, London, W.C., stating the reason for the application (sale or mortgage), the full particulars of the property, the title, the names and dates of birth of the tenants-for-life and in remainder, and the gross amount of the sale money or the amount of the mortgage.

Where the deceased died *on or before* Aug. 1, 1894.

Probate Duty.

"B."—Original Affidavit of Value to lead to Probate or Administration: To be used where the gross personal estate is under £100 in value, or where the whole personal estate, wherever situate, and without deduction for debt, etc., does not exceed £300 in value, the deceased in either case having died on or after June 1, 1881.

"A."—Ditto: To be used where Form "B," "Y" or "Z," is not applicable.

*"Y."—Original Affidavit to lead to Probate or Administration: To be used where the deceased left no personal estate in this country.

*"Z."—Ditto: To be used where the deceased was merely a trustee and had no personal estate of his own.

"D."—Corrective Affidavit of Value: To be used where the grant was taken out on or after June 1, 1881.

*No. 0160.—Corrective Affidavit of Value: To be used where the grant was taken out before that date.

Account Duty.

"C."—For duty under 44 Vict. c. 12, s. 38, & 52 Vict. c. 7, s. 11, on personal property, including leaseholds, passing under voluntary settlement, or joint tenancy, or as a *donatio mortis causâ*, or as gifts made within twelve months of death, and on policies maintained for the benefit of a donee or assignee.

Temporary Estate Duty (under the Customs and Inland Revenue Act, 1889, 52 & 53 Vict. c. 7).

"E."—Statement to be delivered with Affidavit "A," where the estate and effects in respect whereof duty is charged on the affidavit or inventory **exceeds £10,000,** and where application for the grant of probate or letters of administration was made on or after June 1, 1889.

"F."—Statement of the personal or moveable property included in an account "C," where the value of such property **exceeds £10,000.**

"G."—Corrective Statement of Value: To be used where insufficient Estate Duty has been paid on a Form "E."

No. 13. Statement of value to be delivered with an account of any succession on the death of any person dying on or after June 1, 1889, where the value of the succession **exceeds £10,000,** or where, in the case of real estate passing under a will or intestacy, the value of the succession, together with the value of any other benefit taken by the successor under the said will or intestacy, exceeds £10,000.

FORMS IN USE—*continued.*

No. 14.—For the second and subsequent instalments of Estate Duty on Successions.

The Forms when filled in should be *presented personally*, or by an agent, at the Legacy and Succession Duty Office, Somerset House, London, W.C., or they may be sent there through the post from an address *outside* the Metropolitan Postal District.

OBSERVE.—Money should not be remitted until the proper accounts have been delivered and the amount payable and the mode of payment have been notified to the parties.

II. *For Claiming a Return of Duty.*

Estate Duty.

"D-1."—For return of Estate Duty paid on the Inland Revenue Affidavit.

"D-2."—For return of Estate Duty paid on an "Account."

Legacy and Succession Duty.

"H."—The affidavit should be made by the person by whom the duty was paid, and the form should be adapted to meet the circumstances of each case. The stamped receipt for the duty should be annexed, and evidence in support of the claim produced.

Probate Duty.

"D."—Where the original grant was taken out on or after June 1, 1881.

*No. 131.—Where the original grant was taken out before June 1, 1881, and the return is claimed on the ground of over estimate.

*No. 132.—Where the original grant was taken out before June 1, 1881, and the return is claimed on the ground of debts paid.

Vouchers for the payment of the debts must be produced.

Account Duty.

"H."—The affidavit should be made by the person by whom the duty was paid, and the Form should be adapted to meet the circumstances of each case. Evidence in support of the claim should be produced.

Temporary Estate Duty.

"G."—To be used where too much Estate Duty has been paid on a Form "E."

Forms to lead to a return of duty must be presented *personally*, or by an agent, at the Legacy and Succession Duty Office, Somerset House, London, W.C., and cannot be dealt with through the post.

* Application for these Forms must be made *direct* to the Controller of Legacy and Succession Duties by the parties concerned.

The other Forms can be obtained at any Postal Money Order Office outside the Metropolitan Postal District, or from any collector of Inland Revenue, or from the Controller of Legacy and Succession Duties.

FRACTIONS (£10, £100).

In ascertaining the value of an estate, whether an aggregated "one estate" or an "estate by itself," as the case may be, for the purpose of determining under s. 4 of the Act of 1894 the rate of Estate Duty chargeable, and the principal value upon which the duty at such rate is to be charged, the following adjustments are to be made:—

Where the deceased died ON OR AFTER *July* 1, 1896:—Any fraction of £100 in excess of £100, or of any multiple thereof, in the aggregated "one estate" or "estate by itself," as the case may be, is to be disregarded, except that where the principal value of the estate exceeds £100, but does not exceed £200, the Estate Duty is to be £1 (Finance Act, 1896, s. 17). So that an estate of

FRACTIONS (£10, £100)—*continued.*

£10,099 would be treated as £10,000, and the Estate Duty would be at 3 per cent., and would amount to £300. An estate of £10,100 would, however, be treated as £10,100, and the rate of duty would be 4 per cent., and the amount £404. An estate of £199 would by this rule be treated as £100, but it does not thereby acquire exemption from Estate Duty as *not exceeding* £100, but pays £1.

Where duty is paid in respect of real property as well as personal property, on one affidavit on Form A—1 or D—1, or one account on Form C—1 or C—2 or D—2, as the case may be, and there is an odd fraction of £100 in the respective capitals, and the two fractions together do not amount to £100, each fraction is to be disregarded. Thus personal £1422 and real £929 (aggregate £2351) should be treated as personal £1400 and real £900. Where, however, the two fractions together amount to or exceed £100, whichever of the two classes of property has the larger fraction of £100 should be raised to the next multiple of £100, whilst in the other class of property the fraction should be disregarded. Thus personal £1482 and real £929 (aggregate £2411) should be treated as personal £1500 and real £900. Whilst personal £1429 and real £982 (aggregate £2411) should be treated as personal £1400 and real £1000.

Where the deceased died BEFORE *July* 1, 1896:—Any fraction of £10, in excess of £10, or of any multiple thereof, in the aggregated "one estate" or "estate by itself," as the case may be, is to be increased to £10 (s. 17). So that an estate of £10,099 would be treated as £10,100, and the rate of duty would be 4 per cent., and the amount £404. An estate of £199 would be treated as £200, and would pay £2.

Where duty is paid in respect of real property as well as personal property, on one affidavit or account, as the case may be, and there is an odd fraction of £10 in the respective capitals, and the two fractions together exceed £10, *each* class of property should be increased to the next multiple of £10. Thus personal £1482 and real £929 (aggregate £2411) should be treated as personal £1490 and real £930, and personal £1489 and real £922 (aggregate £2411) should also be treated as personal £1490 and real £930. Where, however, the two fractions together do *not* exceed £10, whichever of the two classes of property has the larger fraction of £10 should be increased to the next multiple of £10, whilst in the other class of property the fraction should be disregarded. Thus, personal £1482 and real £926 (aggregate £2408) should be treated as personal £1480 and real £930. Whilst personal £1486 and real £922 (aggregate £2408) should be treated as personal £1490 and real £920.

FREEBENCH.

Freebench is that estate in copyhold lands that a wife has after the death of her husband for her dower, according to the custom of the manor. In most manors it consists of one-half of the husband's copyhold; in others, of a third or a fifth; and in some few, of the whole. It is generally an estate for life, and in many manors it is forfeited by incontinency or a second marriage.

The Dower Act does not affect copyholds. As to claim for Succession Duty on the death of the widow in respect of cesser of freebench, see "Cesser."

Freebench is distinguished from Dower in that it does not usually attach till the husband's death. Whereas at common law the widow is entitled to dower out of all freehold lands of inheritance of which the husband was solely seized

FREEBENCH—*continued.*

at any time during the coverture. By the custon of the manor of Cheltenham freebench attaches on all the copyhold lands of inheritance of which the husband was tenant at any time during the coverture (Doe d., *Riddell* v. *Gwinnell*, 1 Q. B. 682).

FREE MARK.

All second and subsequent grants of probate and administration in respect of property on which the full duty has been already paid upon a previous grant are exempted from further Stamp Duty by 41 Geo. 3, c. 86, s. 3.

This section provides (*inter alia*) that, in every case where any probate or probates or letters of administration shall have been taken out, duly stamped according to the full value of the estate in respect whereof the same shall have been granted, then and in such case any further or other probate or letters of administration as aforesaid, which shall be at any time thereafter applied for in respect of such estate, shall and may be issued and granted upon any piece of vellum, parchment, or paper stamped or marked with the stamp or mark provided by the said Commissioners by virtue of this Act for such other probates or letters of administration as aforesaid; and every such other probate or letters of administration which shall be duly stamped or marked with such stamp or mark as last aforesaid, shall be as available in the law, and of the like force and effect in all respects whatever, as if the vellum, parchment, or paper, whereon the same shall be ingrossed, printed, or written, had been duly stamped with the stamp or mark denoting the full amount of the duties payable in respect of the probate or letters of administration taken out on the full value of such estate, anything in any Act or Acts, or this Act, before contained to the contrary thereof in anywise notwithstanding.

The application (or memorial) to the Commissioners for the stamp provided under this Act for denoting that the duty has been already paid should be made in writing.

Such MEMORIAL should be presented with the affidavit duly filled up, on which the stamp is required to be impressed at the Legacy and Succession Duty Office, Somerset House, and not sent by post.

It should in every case state—

1. The circumstances which render the further grant necessary;
2. Particulars of the assets in respect of which the original grant was obtained, and their value at the date of the grant;
3. Particulars of the assets remaining unadministered at the date of the memorial, with their value at that date; and it should be made clear that such assets form part or are subsequent investments of the original assets.

NOTE.—Full particulars of leaseholds, stocks, and shares should always be given.

The memorial must be accompanied by the probate or the letters of administration (in order that the stamp thereon may be inspected) except—

1. Where the original grant was obtained on or after June 1, 1881; or,
2. Where (the grant being previous to that date) the probate or letters of administration may have already been produced at the Legacy and Succession Duty Office in connection with an adjustment of Stamp Duty.

Where the grant has been lost or mislaid, or where it is in the hands of another person who refuses to produce it, the Commissioners must be satisfied in some way other than by its production that the grant was originally stamped as asserted in the memorial.

If satisfactory information (and the deduction of the duty in the residuary account

FREE MARK—*continued.*

or a certified copy of the probate stating the amount under which the estate was sworn has, in certain cases, been treated as satisfactory indirect evidence) cannot be given in this respect the denoting or duty paid stamp will not be granted, and under these circumstances duty should be paid on the unadministered estate.

Where, however, the denoting stamp is allowed it will be impressed upon the newly made affidavit of property.

A warrant being issued by the Chief Clerk to authorize the subsequent grant to be marked with a Denoting Stamp, the affidavit should be taken (with the warrant) to Room 31, Stamping Department, for the Denoting Stamp to be impressed.

Forms of memorial are not supplied at Somerset House but can be obtained of most law stationers. A model memorial is set out below.

The affidavit of value leading to a grant of administration *de bonis non* should set forth the particulars of the unadministered property. Where the grant to be applied for is a grant of double probate or a cessate grant, it is advisable that application be made, in the first instance, at the Registry of the Probate Division for instructions as to the form of the affidavit and the particulars to be inserted therein.

MODEL MEMORIAL.

The memorial of (*a*) , solicitor or agent for (*a*) , showeth that (*b*) , late of , deceased, died on the day of , 18 .

That on the day of , 18 ("Probate of the Will" or "Administration with the Will annexed of the Personal Estate and Effects" or Administration of the Personal Estate and Effects" as the case may be) was granted by (*c*) to (*a*) (*d*).

The said swore the personal estate and effects of the said deceased (*e*) , and paid a Stamp Duty of £— (*f*) which is (*g*).

The personal estate and effects of the said deceased for or in respect of which the said (*h*) sections was granted, consisted of the items set forth in Account No. 1.

ACCOUNT No. 1 (*i*).

ACCOUNT No. 2 (*j*).

The said (*k*) who is (*l*) of the said (*b*) now applies for a

(*a*) Insert name and address.
(*b*) Insert name of deceased.
(*c*) Insert Registry or Court.
(*d*) State the circumstances which render a further grant necessary, and give the exact dates of the death of any executors or administrators who may be dead.
(*e*) Insert value under or at which sworn.
(*f*) Upon the "grant" or "affidavit of value," as the case may be.
(*g*) "Herewith produced," or "filed at the Legacy and Succession Duty Office," as the case may be.
(*h*) "Probate" or "Administration."
(*i*) Insert particulars of the assets in respect of which the original grant was obtained and their value at that date. N.B.—It is not the practice to supply copies of residuary accounts for this purpose.
(*j*) State here full particulars of the estate remaining to be administered, and, if not identical with items in Account No. 1, show what items in that account such estate represents.
(*k*) Insert name of applicant.
(*l*) Explain in what capacity applicant applies for the grant.

FREE MARK—*continued.*

grant of , and hath sworn the personal estate and effects of the said deceased under the value of £ .

Your memorialists therefore pray that your Honourable Board will be pleased to grant the usual duty-paid stamp for the proposed new grant.

Dated this day of 18 .

Signature .

Where **the deceased died on or after August, 1894,** the memorial to the Commissioners makes application for a certificate, instead of a denoting stamp, that with regard to the new grant, Estate Duty has already been paid or is not payable. The memorial and new affidavit (A-5 Form) are left at the Legacy Duty Office for a short time (usually three clear days), during which time the examiner compares the papers with the original affidavit. If the original affidavit is satisfactory and the memorial and A-5 Form (*a*) are in order, the certificate is issued and handed to applicant when he calls.

If the affidavit not satisfactory or queries arise on the memorial instructions are given to the parties when they attend. Any additional Estate Duty, which may have to be paid before the certificate can be granted, should be accounted for on the corrective affidavit (Form D-1).

Occasionally, however, in exceptional cases, a free mark is granted where the affidavit is not satisfactory, if an undertaking to deliver a corrective affidavit (should it be necessary) is given.

CERTIFICATES.

I hereby certify that the sum of pounds, shillings, and pence, for Estate Duty and interest thereon (subject to rectification if found necessary), was paid in respect of the Property included in this Affidavit on the day of 189 , the duty being charged at the rate of per cent., (or) the fixed Estate Duty of shillings, and that the Commissioners of Inland Revenue offer no objection to the issue of the grant for which application is now made in connection with this affidavit.

For the Commissioners of Inland Revenue,

Chief Principal } Clerk (Estate Duty).

Date 189 .

I hereby certify that on the day of 189 , the sum of pounds shillings, and pence, for Estate Duty and interest thereon (subject to rectification if found necessary), was paid, the duty being charged at the rate of per cent., (or) the fixed Estate Duty of shillings. And that on day of 189 , a further sum of pounds, shillings, and pence was paid on a Corrective Affidavit for Estate Duty and

(*a*) This form is an affidavit or affirmation for Inland Revenue, used where an application is made for a second or subsequent grant of representation, except where the estate was not within the operation of the previous grant, in which case the appropriate form of affidavit as for an original grant should be used.

FREE MARK—*continued.*

interest thereon (subject to further rectification if found necessary), the duty being charged at the same rate as above-mentioned, (or) at the corrected rate of per cent. for the whole Estate, (or) to make up the fixed Estate Duty of shillings, and that these payments, amounting to pounds, shillings, and pence, cover the Estate Duty and interest at the rate of per cent., (or) the fixed Estate Duty, in respect of the Property included in this Affidavit, and that the Commissioners of Inland Revenue offer no objection to the issue of the grant for which application is now made in connection with this Affidavit.

For the Commissioners of Inland Revenue,

Chief Principal } Clerk (Estate Duty).

Date 189 .

I hereby certify that no Estate Duty has been paid or is at present payable in respect of the Property included in this Affidavit, and that the Commissioners of Inland Revenue offer no objection to the issue of the grant for which application is now made in connection with this affidavit.

For the Commissioners of Inland Revenue,

Chief Principal } Clerk (Estate Duty).

Date 189 .

FREE OF DUTY, GIFTS.

1. S. 21 of 36 Geo. 3, c. 52 (the Legacy Duty Act) enacts:—

"That if any direction shall be given, by any will or testamentary instrument, for payment of the duty chargeable upon any legacy or bequest out of some other fund, so that such legacy or bequest may pass to the person or persons to whom or for whose benefit the same shall be given free of duty, no duty shall be chargeable upon the money to be applied for the payment of such duty, notwithstanding the same may be deemed a legacy to or for the benefit of the person or persons who would otherwise pay the duty.

It will be observed here that the terms of exemption from LEGACY Duty apply only to the Legacy Duty upon any "legacy or bequest," and do not extend to Succession Duty upon any property which is chargeable as a succession under the 16 & 17 Vict. c. 51.

S. 18 of 16 & 17 Vict. c. 51 enacts that no Succession Duty is to be paid upon (*inter alia*) "any moneys applied to the payment of the duty on any succession according to any trust for that purpose."

The terms of this exemption only apply to "the duty payable under this Act," that is, Succession Duty, and do not extend to the Duty imposed by the Legacy Duty Acts.

In the result, therefore, money applied by the testator's direction out of his personal estate to payment of Succession Duty upon his real or leasehold property is not exempted from Legacy Duty by either Act. So that a successor under a will has to pay Legacy Duty on the money directed by the

FREE OF DUTY, GIFTS—*continued.*

will to be applied in payment of Succession Duty on the succession. In practice, however, the claim for duty is not now enforced; nor upon bequests to pay Estate Duty.

Examples.

1. Legacy of £100, duty free, to A. (stranger). The duty (£10) comes out of the personal estate, and is exempt from further duty by s. 21 of the Legacy Duty Act (*supra*).

   Where A. is also residuary legatee, the legacy (£100) and duty thereon can, of course, be deducted in the residuary account.
2. Devise of Blackacre, duty free, to A. (child). The duty payable comes out of the personal estate, and is exempt from further duty by s. 41 of 44 Vict. c. 12.
3. Devise of Whiteacre, duty free, to B. (brother). The duty payable comes out of the personal estate, and is liable to duty at 3 per cent. as a legacy to B. (See remarks above on s. 21 of the Legacy Duty Act, and s. 18 of the Succession Duty Act.)
4. Legacy of £500 to the Charing Cross Hospital, duty free. The duty cannot any more than the legacy be paid out of impure personalty (*Wilkinson* v. *Barber*, L. R. 14 Eq. 96); but see "Charities, Gifts to."
5. Legacy of £100, duty free, and charged exclusively on realty (devised to D.) to E. The devisee pays the duty (*Noel* v. *Henley*, 7 Pri. 241), E. being exempt from payment of duty on the gift of the duty by s. 18.
6. Legacy to F. of £800, duty free, charged on a blended fund. The duty attributable to the realty and personalty respectively is payable by the legatee of the residue of the fund (or by the residuary devisee and legatee respectively), F. being exempt by s. 18 and s. 21 (*supra*).
7. Where in examples 5 and 6 the duty is directed to be paid out of personal estate, example 3 applies.
8. In cases of abatement where all the legacies are given duty free, the legatees must pay their own duty on the abated legacies. See "Abatement."

Bequests held to have been given free of Duty (s. 21 of 36 Geo. 3, c. 52).

A direction to the effect that a legacy (or annuity) is to be paid

"without deduction" (*Borksdale* v. *Gilliat*), 1 Swanst. 562);

"clear of property tax and all expenses whatsoever attending the same" (*Courtoy* v. *Vincent*, 1 Turn. & Russ. 433);

"free from all expenses" (*Godsden* v. *Dotterill*, 1 Mylne & K. 56);

"clear" (*Ford* v. *Ruxton*, 1 Coll. 403); *Gude* v. *Mumford*, 2 Y. & C. Ex. 448; *In re Currie*, *Bjorkman* v. *Lord Kimberley*, 57 L. J. Ch. 743, 36 W. R. 752.

"free from any charge or liability in respect thereof" (*Warbrick* v. *Varley*, 30 Beav. 241);

"clear of all deductions whatsoever" (*Dawkins* v. *Tatham*, 2 Sim. 492);

"clear of all taxes and outgoings" *Louch* v. *Peters*, 1 Mylne & K. 489);

"without any deduction or abatement of the same on any account or pretence whatsoever" (*Smith* v. *Anderson*, 4 Russ. 352);

"clear of all taxes and deductions whatsoever" (*Stow* v. *Davenport*, 5 B. & Ad. 359);

"one annuity or clear yearly sum of £100" (*Gude* v. *Mumford*, 2 Y. & C. 448.

amounts to a direction that the legacy or annuity in question shall be paid free of Legacy Duty within the meaning of s. 21.

FREE OF DUTY, GIFTS—*continued.*

Where, however, there is a direction to invest a sum sufficient to produce a CLEAR yearly income to be enjoyed by different persons in succession chargeable to different rates of duty, the fund is not exonerated from duty (*Sanders* v. *Kiddell*, 7 Sim. 536; *Pridie* v. *Field*, 19 Beav. 497). Where chargeable to the same rate of duty, see *Calvert* v. *Sebbon* (2 Ke. 672).

A gift of six months' "full" salary is not held to be a gift free of duty (*Re* Marcus, 56 L. J. Ch. 830).

A general direction to pay all legacies free of duty will include legacies given by a subsequent codicil (*Byne* v. *Currey*, 2 Cr. & Mee. 603; *Williams* v. *Hughes*, 24 Beav. 474; see *Kirkpatrick* v. *Bedford*, 4 App. C. 96).

In some cases, however, such expressions as "foregoing legacies," or "herein mentioned" have upon the general intention been extended to legacies given by a codicil (*Williams* v. *Hughes*, 24 B. 474; *Jauncey* v. *Attorney-General*, 3 Giff. 308).

Where, however, a testator directed by his will that "the several legacies hereinbefore by me bequeathed" should be paid free of all deductions, it was held that the word "hereinbefore" had the effect of restricting the operation of the direction to the legacies given by the will (*Early* v. *Benbow*, 10 Jur. 280; 2 Coll. 354).

A direction by testator for Legacy Duty to be paid on the legacies and bequests given by him will not include proceeds of sale of realty directed to be sold and held on certain trusts (*White* v. *Lake*, 6 Eq. 188).

A general direction to pay "legacies" free of duty will include a gift of stock (*Ansley* v. *Cotton*, 16 L. J. R. (Ch.) 55); not so a general direction to pay "pecuniary legacies" free of duty (*Douglas* v. *Congreve*, 1 K. 410); the forgiveness of a debt will be included by either direction (*Morris* v. *Livie*, 11 L. J. (Ch.) 172).

A direction that all the legacies are "to be paid free of legacy duty" includes the specific legacies, but does not include succession duty payable in respect of leaseholds (*Cockerell* v. *Earl of Essex*, *In re Johnston*, L. R. 26 Ch. D. 538). In this case it was held that under the words "all the legacies left by my will and codicil to be paid free of legacy duty" the legacy duty was to be paid out of the estate on all legacies pecuniary as well as specific, the word "paid" not being sufficient under the circumstances to cut down the direction to pecuniary legacies only.

A direction to pay a legacy (charged on real estate) free of duty charges the realty with both the legacy and the duty (*Stow* v. *Davenport*, 5 B. & Ad. 359; *Noel* v. *Lord Henley*, 7 Price, 241).

A legacy or annuity given by codicil in substitution for a legacy or annuity previously given by will free of duty, though the amount be increased, will also be payable free of duty (*Cooper* v. *Day*, 3 Mer. 154; *Earl of Shaftesbury* v. *Duke of Marlborough*, 7 Sim. 237); but not so where another legatee is substituted by reason of the death of the legatee named in the will (*Chatteris* v. *Young*, 2 Russ. 183); nor where the character of the bequest is altered (*Burrows* v. *Cottrell*, 3 Sim. 375).

RESIDUE cannot be given free of duty (*Lord Londesborough* v. *Somerville*, 19 Beav. 295). Where a legacy is given to a charity, the duty cannot be paid out of impure personalty (*Wilkinson* v. *Barber*, L. R. 14 Eq. 96).

A gift of Legacy Duty is itself a pecuniary legacy, and must abate with the

FREE OF DUTY, GIFTS—*continued.*

general legacies in the event of insufficiency of assets (*Farrer* v. *St. Catherine's College, Cambridge*, L. R. 16 Eq. 19).

Where all the legacies are given duty free, and the legacies have to abate, the legatees must pay their own duty on the abated legacies, there being no other fund out of which to pay the duty (*Lord-Advocate* v. *Taylor*, 21 Sco. L. R. 709).

Succession Duty.

In a gift to A. of a jointure rent-charge to be paid on death "without any abatement or deduction whatsoever on account or in respect of any taxes, charges, impositions, or assessments already taxed, charged, assessed, or imposed, or hereafter to be taxed, etc.," either on the real estate, or on the rent-charge, or on A. in respect of it, A. was held to be entitled to have the Succession Duty raised and paid out of the land in addition to the jointure (*Floyer* v. *Banks*, 9 Jur. N. S. 1256). The words "free from deduction" would, apparently, not release A. from her liability for the duty. See Hanson, 4th ed. pp. 643, 707.

Where A., tenant-for-life under a marriage settlement, in exercise of a limited power in favour of the children of the marriage, appointed stock sufficient to raise "a net sum" of £2000 in favour of B. (child), it was held that B. took the £2000 clear of all charges, including Succession Duty (*Re Saunders*; *Saunders* v. *Gore*, 77 L. T. 450).

FRIENDLY SOCIETIES.

18 & 19 Vict. c. 63, s. 31, provides that:—

When on the death of any member of any certified friendly society; or any certified branch, or of any friendly society already established, any sum not exceeding £50 shall become payable, it shall be lawful for the trustees for the time being of such society, if they shall be satisfied that no will was made and left by such deceased member, and that no letters of administration or confirmation will be taken out of the funds, goods or chattels of such depositor, to pay the same to the widower or widow of such member, as the case may be, or to the child of such member, if so directed by any rule of such society or branches, and in case there shall be no such direction, then they may pay and divide the same to and amongst the person or persons entitled to the effects of the deceased intestate, without taking out letters of administration in England and Ireland, and without confirmation in Scotland."

FUND IN COURT. See "Payment into Court."

FUNERAL EXPENSES.

Where the grant of probate or administration has been taken out on or after June 1, 1881, a deduction from the value of the estate and effects may be taken in the first instance, in the case of a person dying domiciled in any part of the United Kingdom, of (debts and) funeral expenses.

The funeral expenses to be deducted must, however, "include only such expenses as are allowable as reasonable funeral expenses according to law" (s. 28 of 44 Vict. c. 12). As against Estate Duty the expression is "reasonable funeral expenses"—and the words "according to law" do not appear (Finance Act, 1894, s. 7 (1)). Therefore, it has been held that a deduction cannot be taken of expenses in respect of embalming, bringing body home from abroad (*a*), tomb,

(*a*) Costs of transport of body (and embalmment) now allowed against Estate Duty.

FUNERAL EXPENSES—*continued.*

monument, or mourning, or refreshments at a funeral (*Bridge* v. *Brown*, 2 Y. & Coll. C. C. 181; *Johnson* v. *Baker*, 2 Carr. & Pay. 207; *Stag* v. *Punter*, 3 Atk. 119 (case where deceased died insolvent); *Bissett* v. *Antrobus*, 4 Sim. 512 (case where £2210, funeral expenses of a peer, disallowed); *Pitt* v. *Pitt*, 2 Cas. temp. Lee, 508 (where Sir J. Lee made an allowance to a widow (administratrix) for her mourning).

Wife's funeral expenses:—

Funeral expenses of a married woman would now appear to be payable out of her own estate (*In re M'Myn, Lightown* v. *M'Myn*, 33 C. D. 575). See, however, *Gregory* v. *Lockyer*, 6 Mad. 90.

Per contra, a widow would appear to be liable for her husband's funeral expenses, where he has no property (*Chapple* v. *Cooper*, 13 M. & W. 252).

In practice, for Death Duty purposes, the wife's funeral expenses are allowed as a deduction against her separate estate, where paid by the husband.

FURNITURE.

Where specifically bequeathed, a valuation (unless already filed with the affidavit leading to the grant) should accompany the legacy receipt (form No. 1).

As to liability to additional Duty where sold in excess of valuation. See "Valuation."

Where bequeathed to several persons in succession, it is not liable to Legacy Duty while enjoyed in kind; but it is liable when actually sold, or when it comes "into the possession of any person or persons having power to sell or dispose thereof" (s. 14 of 36 Geo. 3, c. 52).

Note doctrine of *Howe* v. *Lord Dartmouth*, 7 Ves. 137, where included in a gift of residue to persons in succession, and testator does not contemplate the specific enjoyment by the tenant-for-life. See "Conversion."

A gift by will of "furniture" *primâ facie* includes only furniture reserved for domestic or personal use (*Farrant* v. *Spencer*, 1 Ves. Sen. 97). It will include plate, linen, and pictures, but not wines or books, nor goods in a house of business which belong merely to the business.

FURTHER SECURITY. See "Certificate of Further Security."

G.

GAMBIA.

Date of Order in Council (Finance Act, 1894), May 11, 1895.

No Death Duty leviable.

GAVELKIND.

Gavelkind descends in the right line to all the sons equally, being an exception to the law of primogeniture. In default of sons it descends to the daughters in the ordinary way. Though females claiming in their own right are postponed to males, yet they may inherit together with males by representation. Where A. has three sons and purchases lands held in gavelkind, and one of the sons predeceases his father leaving a daughter, she will inherit the share of her father.

This custom extends also to the collateral line, for it has been resolved that where one brother dies without issue all the other brothers shall inherit from him,

GAVELKIND—*continued.*

and in default of brothers their respective issue shall take *jure representationis*. But where nephews and nieces succeed with an uncle the descent is *per stirpes* and not *per capita*.

If A. die seized in tail of lands held in gavelkind, all his sons shall inherit together as heirs of his body.

The other special customs of this tenure are :—

1. The widow is dowable of one-half of the land; but only while she remains unmarried and chaste.
2. The husband will be tenant by the curtesy whether there be issue born or not, but only of one-half so long as he remains unmarried.
3. An heir in gavelkind at fifteen years may make a contract and sell his estate for money; but the livery upon the feoffment (the only deed which can be adopted) must be made by the heir in person.

Gavelkind, before 1066, was the general custom of the realm; the feudal law of primogeniture superseded it. By 34 & 35 Hen. 8, c. 26 all gavelkind lands in Wales were made descendible to the heir according to the common law. *Primâ facie*, all land in Kent is gavelkind except such as is disgavelled by particular statute.

GENERAL BEQUEST.

S. 27 of the Wills Act (1 Vict. c. 26) enacts that a bequest of the personal estate of the testator or any bequest of personal property described in a general manner, shall be construed to include any personal estate or any personal estate to which such description shall extend (as the case may be) which he may have power to appoint, in any manner he may think proper, and shall operate as an execution of such power, unless a contrary intention shall appear by the will.

GENERAL DEVISE.

By s. 26 of the Wills Act a general devise of lands will include not only freehold, but leasehold and copyhold land, unless a contrary intention shall appear by the will; and by s. 27 will include real estate over which the testator has a general power of appointment.

Gift of all the personalty to A. and all the lands to B. B. will take the leaseholds (*Wilson* v. *Eden*, 5 Ex. 752).

Gift of all the personal estate to A. and all the real estate to B. A. will take the leaseholds (*ib.*, and *Turner* v. *Turner*, 1 J. & W. 39).

Gift by testator of an annuity to A., charged on his real estate, and testator had no lands except long leaseholds, they were held to be charged with the annuity (*Sully* v. *Davis*, L. R. 10 Eq. 562).

Reversions pass under a general devise (*Chester* v. *Chester*, 3 P. W. 56).

By s. 27 a general devise of the real estate of the testator or of the real estate of the testator in any place or in the occupation of any person mentioned in his will, or otherwise described in a general manner shall be construed to include any real estate or any real estate to which such description shall extend (as the case may be) which he may have power to appoint, in any manner he may think proper, unless a contrary intention shall appear by the will.

The question whether a general devise or bequest operates as an execution of a limited power of appointment, is a question of the intention of the testator to be gathered from the terms of the will, and which intention must be shown, either by reference to the power or the property (*Wildbore* v. *Gregory*, L. R. 12 Eq. 482; *Re Williams*, 42 Ch. D. 93).

GENERAL DIRECTION TO PAY DEBTS. See "Debts."

GENERAL LEGACY.

A general legacy is one given out of testator's estate generally, and not comprising any specific portion of it.

For example, a bequest of a diamond ring; £1000; £1000 stock, etc.

Such a bequest is only payable out of the personal estate not specifically bequeathed, and is not payable out of the real estate unless charged upon it, and if the fund for the payment of legacies of this kind is insufficient they must abate *pro rata*. See "Abatement."

GENERAL POWER OF APPOINTMENT. See "Powers."

GIBRALTAR.

Date of Order in Council (Finance Act, 1894), July 16, 1895.

No Death Duty leviable.

GIFTS INTER VIVOS.

Account Stamp Duty (44 Vict. c. 12, s. 38) enacts (*inter alia*) that—

The personal or moveable property to be included in an account shall be property of the following descriptions, viz.:—

(*a*) Any property taken as a *donatio mortis causâ*, made by any person dying on or after June 1, 1881, or taken under a voluntary disposition, made by any person so dying, purporting to operate **as an immediate gift inter vivos**, whether by way of transfer, delivery, declaration of trust or otherwise, which shall not have been *bonâ fide* made **three months before** the death of the deceased.

52 Vict. c. 7, s. 11, made the following amendment:—

(1) Sub-s. 2 of s. 38 of the Customs and Inland Revenue Act, 1881 (44 & 45 Vict. c. 12), is hereby amended as follows:—

The description of property marked (*a*) shall be read as if the word **twelve** were substituted for the word **three** therein, and the said description of property shall include property taken under **any gift, whenever made**, of which property *bonâ fide* possession and enjoyment shall not have been assumed by the donee immediately upon the gift, and thenceforward retained, to the entire exclusion of the donor, or of any benefit to him by contract or otherwise.

Examples.

1. Donation of £1000 by A. to the Westminster Hospital on July 4, 1890, within twelve months of his death.

   Account Stamp Duty payable (52 Vict. c. 7, s. 11; s. 38 of 44 Vict. c. 12).

2. Gift by A. of £2000 to his brother B., in consideration of B. paying him an annuity of £80 per annum for the remainder of his life. A. dies after June 1, 1889, but before Aug. 2, 1894.

   Account Stamp Duty payable on the whole fund (s. 11 (i.) of 52 Vict. c. 7). It is immaterial when the gift was made.

   Succession Duty also payable by the brother, B., in respect of the cesser of the annuity. Duty calculated as on a gift of £80 per annum in perpetuity. (Table III., 95 years certain).

3. Gift by D. of £500 to his wife, E. (since operation of Married Women's Property Act, 1882), and within twelve months of his death.

   For Account Stamp Duty to be payable, the gift and the death must both be

GIFTS INTER VIVOS—*continued.*

after June 1, 1889, and before Aug. 2, 1894, where the death is more than three months after the gift.

4. Assignment by F. of policy of assurance for £1200, effected on his life (*ob.* 1888) in the North British and Mercantile Assurance Office in favour of his sister, C., and within three months of his death. Account Stamp Duty and Succession Duty (s. 17 of 16 & 17 Vict. c. 51) payable, the duty in both cases being proportionate to the premiums paid by the deceased, see "Life Policy." Similarly, where F. is a nominee under a Nomination Policy. Immaterial when assignment made, where F. dies after June 1, 1889, but before Aug. 2, 1894.

Estate Duty.

S. 2 (1) of the Finance Act, 1894, enacts that property passing on the death (after Aug. 1, 1894) of the deceased shall be deemed to include (*inter alia*):—

Property which would be required on the death of the deceased to be included in an account under s. 38 of the Customs and Inland Revenue Act, 1881 (44 & 45 Vict. c. 12), as amended by s. 11 of the Customs and Inland Revenue Act, 1889 (52 & 53 Vict. c. 7), if those sections were herein enacted and extended to real property as well as personal property and the words "voluntary" and "voluntarily" and a reference to a "volunteer" were omitted therefrom; (*a*) and—

Examples.

1. Gifts of personal estate within twelve months of death (see Examples above).
2. Gifts of real estate within a similar period.
3. Settlement of real or personal estate within a similar period, would also attract the Estate Duty, but not Settlement Estate Duty (*Miles* v. *Regina*, Q. B. D. April 12, 1897).

It is immaterial, to attract the duty, that the gift was to a charity and not made in contemplation of death (*Attorney-General* v. *Booth*, 63 L. J. Q. B. 356).

Generally.

A gift *inter vivos* may be made by transfer beneficially or in trust; or by a valid declaration of trust.

An imperfect assignment cannot, however, be construed as a declaration of trust (*Richards* v. *Delbridge*, L. R. 18, Eq. 11).

Personal property may be transferred by a mere gift accompanied by delivery of possession, or by means of a deed of gift with or without delivery.

Delivery consists in the voluntary transfer of possession from one person to another; that is "the deliveror, by some apt and manifest act, puts the deliveree in the same position of control over the thing, either directly or through a custodian, which he held himself immediately before that act" (Pollock and Wright on "Possession," p. 46).

Where property transferable by deed, is so transferred, the gift is valid until disclaimer (verbal or written), although not accepted or delivered.

(*a*) Where singly, or in the aggregate, less than £20 each, *mortis causâ* and other *inter vivos* gifts are not in practice aggregated or charged with Estate Duty; but this does not apply where there are several such gifts exceeding in the aggregate £20, and made in favour of one and the same person, or body of persons.

But gifts which the deceased has been in the habit of making for a series of years, so that they can be fairly regarded as part of his regular annual expenditure, are not in practice aggregated or charged with Estate (or Account Duty).

GIFTS INTER VIVOS—*continued.*

Chattels capable of delivery may be given by parol, but to perfect the gift delivery is essential (*Cochrane* v. *Moore*, 25 Q. B. D. 57).

"To establish as irrevocable a voluntary gift of personal chattels, there must be shown a present intention on the part of the donor immediately to divest himself of all right of ownership and possession in the goods in favour of the donee, and acceptance of the gift by the donee. Actual delivery and receipt of the possession of the goods is, of course, the best evidence of such a gift and its acceptance" (Williams' "Personal Property.")

If an intending donor should not attempt to part with the ownership, but should declare that he holds the goods in trust for the donee, equity will enforce the trust although voluntarily created (*Ellison* v. *Ellison*, 6 Ves. 656).

It is not, however, essential to the validity of a present gift of chattels, intended to take effect immediately, that the donor should part with the actual possession of the goods if the gift be accepted and the donor remain in possession thereof no longer on his own behalf, but as a mere bailee for the donee.

Where B. (donee) had possession before gift by A. (donor), it is not necessary that B. should restore the thing to A. and A. redeliver to B. to support the gift. A change in the character in which the thing is held will suffice to make the gift effectual (*Kilpin* v. *Ratley*, (1892) 1 Q. B. 582).

As to the case where the chattel (the subject of the intended gift) is already in the possession of the donee, see also *Winter* v. *Winter*, 9 W. R. 747.

Examples of Constructive Delivery.

1. Where the goods are not capable of actual delivery, delivery of KEY where goods are stored in a warehouse; and, in the case of a gift of timber, marking the same with the initials of the donee.
2. Where the goods are capable of actual delivery, a delivery of a part with the intention that it shall operate as a constructive delivery of the whole, may be equivalent to delivery of the whole (*Re Harcourt*, 31 W. R. 578).
3. Where the goods are in the custody of a simple bailee (*e.g.* wharfinger or carrier), the goods are constructively in the possession of the bailor, which constructive possession may be delivered by him to a third person.

For example:—

By handing over a delivery order where goods are warehoused in, say, Liverpool.

By indorsement and delivery of the dock warrant where warehoused in London docks.

By indorsement and delivery of a bill of lading in respect of goods at sea.

Gifts to Wife.

By the Conveyancing and Law of Property Act, 1881, a chose in action may be conveyed by a husband to his wife, and by a wife to her husband, alone or jointly with another person; and since Jan. 1, 1883, gifts made by a husband to a wife are as valid as gifts made by one stranger to another.

The evidence to support a gift between husband and wife must be unequivocal and beyond suspicion.

i. Gifts by Husband to Wife.

1. Expenditure by husband of wife's separate property (*Barrack* v. *McCullock*, 3 K. & J. 110, 119).
2. Transfer of stock into wife's name (*Lucas* v. *Lucas*, 1 Atk. 270).
3. Direction by husband to his debtor to transfer the debt in his books to the

GIFTS INTER VIVOS—*continued.*

account of the husband and wife, a promissory note for the amount being cancelled and a new one payable to the husband and wife being taken (*Gosling* v. *Gosling*, 3 Drew. 335).

4. A deposit in a bank, the receipt being taken in the joint names of the husband and wife (*Talbot* v. *Cody*, 10 Ir. Rep. Eq. 138).
5. A payment of a legacy to the account of the wife, she investing it and declining to lend it to the husband (*Parker* v. *Lechmere*, 12 Ch. D. 256).
6. Leaving a balance at a bank in the wife's maiden name, as agreed before marriage, upon which she drew from time to time (*Re Whitehead*, 74 Q. B. D. 419).

The following were held not to be gifts :—

1. Where produce of butter, eggs, etc., placed in the bank in the wife's name with the husband's consent, who called it her money, and on his death gave directions to his executors to do the best with it for the wife (*Mead* v. *Mead*, 15 Beav. 529; and see *Re Whittaker*, 21 Ch. D. 657).
2. Where savings from a household allowance given by the husband were invested by the wife in her own name (*Barrack* v. *McCullock*, 3 K. & J. 110; *Hoyes* v. *Kindersley*, 2 Sm. & G. 195).
3. Where the husband wrote a letter saying, "I give you all my furniture" in a certain place (*Re Breton*, 17 Ch. D. 416).

ii. **Gifts by Wife to Husband.**

1. A simple payment by wife to husband of the income of her separate estate (*Woodward* v. *Woodward*, 3 De G. J. & S. p. 674).
2. A receipt by him of her separate income with her assent raises a presumption of gift or application for joint purposes so that accounts between them are excluded (*Cator* v. *Redeout*, 1 M. & G. 599; *Edward* v. *Cheyne*, 13 App. Cas. 385; *Re Flamank*, 40 Ch. D. 461).
3. A transfer of wife's separate property into husband's name is *primâ facie* no gift.
   i. *Rich* v. *Cockell*, 9 Ves. 369, where wife's trustee transferred her separate legacy of £500 to her husband.
   ii. *Re Curtis*, *Hawes* v. *Curtis*, 52 L. T. 244, where shares to which she became entitled under an intestacy for her separate use were transferred by the administrator into her husband's name, she and her husband executing a release. See also *Re Flamank*, 40 Ch. D. 461; *Re Blake*, *Blake* v. *Power*, 60 L. T. 663; *Rowe* v. *Rowe*, 2 De G. & Sm. 294.
4. *However*, the *employment of the wife's capital moneys*, partly in business and partly in family expenditure with her knowledge and assent, amounts to a gift to husband and puts an end to the separate use (*Gardner* v. *Gardner*, 1 Giff. 126).
5. So does also an appointment by wife of settled moneys to his and her own use and realization by him with her assent (*Hale* v. *Sheldrake*, 60 L. T. 292).

iii. A purchase of real or personal property in the joint names of the real purchaser (the person who paid the money) and his wife, or in the name of the wife alone, raises a presumption of advancement, or the fulfilment of a natural obligation on the husband to make a provision for his wife, rebuttable by evidence that no gift was intended (*Standing* v. *Bowring*, 31 Ch. D. 282). See Crawley's "Husband and Wife."

GIFTS OVER.

S. 10 of the Conveyancing Act, 1882 (45 & 46 Vict. c. 39), enacts that "where there is a person entitled to land for an estate in fee, or a term of years absolute or determinable on life, or for term of life, with an executory limitation over on default or failure of all or any of his issue, whether within or at any specified period or time or not, that executory limitation shall be or become void and incapable of taking effect, if, and as soon as there is living any issue who has attained the age of twenty-one years, of the class on default or failure whereof the limitation over was to take effect." This section, which is limited to land, applies where the executory limitation is contained in an instrument coming into operation after Dec. 31, 1882.

Rules based on decided cases where the Act is not applicable :—

In an immediate gift by the testator (A.),

1. To B., and if he shall die to C. C. is to take on B.'s death in A.'s lifetime;
2. To B. indefinitely, followed by a gift at his decease. B. only takes a life-interest (*Constable* v. *Bull*, 3 De G. & S. 411);
3. To B., and if he shall die without children to C. C. takes upon B.'s death without children, at any time, whether before or after the testator (*Farthing* v. *Allen*, 2 Mad. 310);
4. To B. for life, with remainder to C., and if he shall die to D. D. is to take on C.'s death during B.'s lifetime;
5. To B. for life, with remainder to C., and if he shall die without children to D. D. is to take on C.'s death, at any time, without children whether before or after B. (*O'Mahoney* v. *Burdett*, L. R. 7. H. L. 388; *Ingram* v. *Soutten*, *ib.* 408).
6. To B. for life, and after his decease to his children, with a provision that if any of the legatees die before their legacies become payable the legacy of each so dying shall go to his executors and administrators. The contingency referred to is the death in the interval between the death of the testator (A.) and that of B., so that where a legatee predeceases, the gift to him fails (*Corbyn* v. *French*, 4 Ves. 418);
7. To B., and if he shall die before his legacy is payable, over. The gift over takes effect if B. predeceases testator, even though he has attained the age fixed for payment, and also if he survives, but dies before the time fixed for payment. If no time is fixed for payment, payable refers to testator's death (*Re Gaitskells Trusts*, 15 Eq. 386; *Rammell* v. *Gillow*, 9 Jur. 704). See further, Theobald on Wills, 4th edition.

GOLD COAST.

Date of Order in Council (Finance Act, 1894), July 16, 1895.

No Death Duty leviable.

GOODWILL.

A goodwill of a business is that connection in trade which induces customers to deal with the person or persons carrying on that business. It varies in almost every case; but it is in effect an appreciable part of the assets of a concern, which may be preserved (at least to some extent) if the business is sold as a going concern, but is wholly lost if the concern is wound up, its liabilities discharged, and its assets got in and distributed. It does not survive to the remaining partners, on the decease of one of the partners, unless by express agreement, but belongs to the surviving partners and the estate of the deceased partner, according to the terms of the contract, and, when that is

GOODWILL—*continued.*

silent, according to their shares in the concern (*Wedderburn* v. *Wedderburn*, 22 Beav. 104; *Smith* v. *Everett*, 27 Beav. 446). See Allan's "Goodwill."

The goodwill of a business is liable as an asset to Probate (or Estate) and Legacy Duty, and the value thereof (the price at which taken over, or the value according to the custom of the trade, or in default the estimated value) should be included in account No. 1, annexed to the affidavit leading to the grant and in the residuary account (Form No. 3) for Legacy Duty.

Goodwill, however, is not, strictly speaking, an asset where the business is of a **personal nature** (*Cooper* v. *Metropolitan Board of Works*, 25 Ch. D. 505). For example, in an attorney's business (*Austen* v. *Boys*, 2 De G. & J. 626; *Arundell* v. *Bell*, 52 L. J. Ch. 537); in a non-dispensing medical practice (*May* v. *Thomson*, 20 Ch. D. 705, 718); in a stockbroker's business (*Wilson* v. *Williams*, 29 L. R. Ir. 176); otherwise, where, as in a dentist's practice, the business is not always purely personal (*Smale* v. *Graves*, 3 De G. & Sm. 706; *Morgan* v. *Schuyler*, 79 N. Y. 490 (American Case)).

In a bequest of the goodwill of a business, the business premises will not pass as a general rule (*In re Henton*, 30 W. R. 702); but in *Blake* v. *Shaw*, Johns 732, the lease of the premises was held to pass in a bequest of "the plant and goodwill," it being held that the premises were necessary to the transfer of the goodwill. See further "Partnership."

GRANDFATHER, GRANDMOTHER.

Liability of, to Legacy and Succession Duty. See "Lineals."

GRANT, TIME OF ISSUING.

1. *Probate or Letters of Administration, with Will annexed.*

Not until after the **lapse of seven days** from the death of the deceased, unless under the direction of the judge, or (principal registry) by order of two of the registrars, or (district registry) by order of one of the registrars of the principal registry.

2. *Letters of Administration.*

Not until after the **lapse of fourteen days** from the death of the deceased, unless under the direction of the judge, or (principal registry) by order of two of the registrars, or (district registry) by order of one of the registrars of the principal registry.

3. In every case where probate or administration is for the first time applied for after the lapse of three years from the death of the deceased, the reason of the **delay is to be certified** to the registrars. Should the certificate be satisfactory, then (principal registry) the registrars are to require such proof of the alleged cause of delay, as they may see fit; or (district registry) the registrar is to require an affidavit, or to communicate with the registrars of the principal registry. This also applies where (in district registries) the case is one of personal application.

Rules 43–45 (1862), 51–53 (1863).

GRASSUM.

Paid for renewal of lease chargeable with Succession Duty (s. 25 of 16 & 17 Vict. c. 51).

GREAT UNCLE, GREAT AUNT.

Chargeable to Legacy Duty at the rate of 6 per cent. (55 Geo. 3, c. 184, sch., Part III.), and to Succession Duty at the rate of 6 per cent. (s. 10 of 16 & 17 Vict. c. 51),

GREAT UNCLE, GREAT AUNT—*continued.*

and of 7½ per cent. (s. 21 of 51 Vict. c. 8); but see "Additional Succession Duty."

Should be described as brother (sister) of a grandfather (grandmother) of the deceased.

GREENWICH HOSPITAL.

Gift to, exempt from the operation of the Mortmain Act (10 Geo. 4, c. 25, s. 37; 4 Will. 4, c. 38, s. 1).

GROUND RENT

Is a periodical payment for the privilege of building on another person's land. See also "Leaseholds."

A devise of freehold or leasehold ground rents passes the reversion (*Maundy* v. *Maundy*, 2 Stra. 1020; *Kaye* v. *Laxon*, 1 B. cc. 76).

GROWING CROPS. See "Crops."

GUARDIAN.

Accountable for **Succession Duty** (s. 44 of 16 & 17 Vict. c. 51);

Estate Duty (Finance Act, 1894, s. 8 (4)).

Infant's legacy paid into Court under the provisions of s. 32 of 36 Geo. 3, c. 52, will not be paid out to a testamentary guardian (*Re Cresswell*, 30 W. R. 244).

H.

HALF-BLOOD.

Kinsmen of the half-blood can now inherit by virtue of the Inheritance Act (3 & 4 Will. 4, c. 106).

S. 9 provides that those related by the half-blood take only after those related by the whole-blood and their descendants, where the common ancestor is a male. For example, where A. devised real estate to C. (son by second wife), and C. survived his father and died intestate and unmarried, leaving B. (son of A. by first wife), and D. (son of A. by second wife) surviving; D. would take in preference to B.

Prior to the above Act the half-blood, like the lineal ancestor, was wholly excluded. The half-blood were not, however, excluded in the descent of estates tail because the descent is from the first purchaser or original donee, and the issue in tail is always of the whole blood to the donee.

The half-blood are admitted equally with those of the whole-blood, under the description "next-of-kin" (*Collingwood v. Pace*, 1 Vent. 424).

HAYGARTH CASE. (*Re Haygarth's Trusts*, 48 L. T. (N.S.) 24).

By a marriage settlement certain funds were settled upon trust to pay the income to A. (wife) for life (*ob.* 1876); remainder to B. (husband) for life; remainder to children attaining 21 years of age.

A. and B. had one son (C.) who attained 21, and died (June, 1880) intestate.

B. took out letters of administration to his son C.'s estate, and paid the 3 per cent. Stamp Duty on C.'s reversionary interest in said funds under s. 27 of 44 Vict. c. 12.

HAYGARTH CASE—*continued.*

Held, that there was no further liability to pay the 1 per cent. Succession Duty on the son's reversionary interest in the settled funds (see s. 41 of 44 Vict. c. 12).

Where grant not taken out to C.'s estate the practice is to claim the Succession Duty, and refund the same, on application by the parties, when Stamp Duty has been paid on the reversionary interest in said fund.

HEIR-AT-LAW.

Nemo est hæres viventis. Therefore a devise to the heirs of A. is contingent, unless it can be shown from the context that the testator meant by heir the heir apparent, or presumptive, or some other person who will take as *persona designata.*

The heir cannot disclaim his succession in England; as to Scotland, see *Lord-Advocate* v. *Stevenson,* 4 Sco. Sess. Ca. 3rd. Ser. 322, and Conveyancing (Scotland) Act, 1874 (37 & 38 Vict. c. 94), ss. 9 & 12, which practically abolished the distinction between the two countries.

The heir is entitled to undisposed-of real estate; also to undisposed-of proceeds of real estate directed to be sold (*Ackroyd* v. *Smithson,* 1 Bro. C. C. 503; 1 L. C. 949), and there must be a gift over to defeat the heir. See "Conversion."

The heir (or residuary devisee) is entitled to accumulations of real estate released by statute (Thellusson Act, 39 & 40 Geo. 3, c. 98).

The heir has no right of retainer out of lands made assets by the 3 & 4 Will. 4, c. 104, nor generally out of any lands whatsoever, except possibly in respect of a specialty.

The heir of an intestate does not take where the deceased inherited the property, was not in fact the purchaser; nor where the freeholds are gavelkind (*q.v.*), or Borough English (*q.v.*); nor where the deceased died since Sept. 1, 1890, leaving a widow and no issue, and a net estate (real and personal) not exceeding £500.

Where a testator devises land to the person who is his heir-at-law, the devisee takes by purchase, and in case of his death intestate the lands descend to his heir-at-law (s. 3 of 3 & 4 Will. 4, c. 106); see *Strickland* v. *Strickland* (10 Sim. 374).

As to descent of real estate in case of an intestacy, see "Descent."

HEIR OF ENTAIL.

An institute or **heir of entail** in possession of an entailed estate shall, whether *sui juris* or not, be deemed for the purposes of this Act to be a person competent to dispose of such estate (Finance Act, 1894, s. 23 (15)).

Where an entailed estate passes on the death of the deceased to an institute or **heir of entail,** who is not entitled to disentail such estate without either obtaining the consent of one or more subsequent heirs of entail or having the consent of such one or more subsequent heirs valued and dispensed with, Settlement Estate Duty as well as Estate Duty shall be paid in respect of such estate, but neither Estate Duty nor Settlement Estate Duty shall be payable again in respect of such estate, until such estate is disentailed, or until an heir of entail to whom it passes on or subsequent to the death of the institute or heir first mentioned, and who is entitled to disentail it without obtaining the consent of any subsequent heir or heirs or having the consent of any subsequent heir or heirs valued and dispensed with, dies (s. 23 (16)).

HEIRLOOMS.

S. 14 of the 36 Geo. 3, c. 52, enacts that no duty shall be paid on any articles of **plate, furniture, or other things,** not yielding any income, and given to or for the benefit of, or so as that the same be enjoyed by, different persons in succession, **whilst the same shall be so enjoyed in kind** only by any person or persons not having any power of selling or disposing thereof, so as to convert the same into money or other property yielding an income; but if the same shall be actually sold or disposed of, or shall come to any person or persons having power to sell or dispose thereof, or **having an absolute interest therein,** (*a*) then, and in each and every such case, the same duty shall be chargeable and paid thereon as if the same had been originally given absolutely, and with full power to sell or dispose thereof, and shall be chargeable upon and paid by the person or persons for whose benefit the same shall be sold, or who shall have power to sell or dispose thereof, or an absolute interest therein, and shall become the debt of such person or persons; but shall not be a charge on any person or persons by reason of his, her or their having assented to such bequest, as the person or persons having or taking the burthen of the execution of the Will or testamentary instrument by which such bequest shall have been made.

Heirlooms are such personal chattels as devolve, by force of a special custom, to the heir with the inheritance and not to the executor or administrator of the last owner; who, if he leaves the land to descend to his heir, cannot by his will bequeath the heirlooms.

The term "heirlooms" is not uncommonly applied to pictures, plate, or furniture directed by will or settlement to follow the limitations thereby made of some family mansion or estate.

1. A bequest of chattels to A. and his heirs to go as heirlooms vests absolutely in A. (the first person seized in tail), and on his death devolve to his executors or administrators, whether such words as "so far as the rules of law and equity permit," or "to be enjoyed and go with the title" are added or not (*Rowland* v. *Morgan*, 6 Ha. 463; 2 Ph. 764), and Legacy Duty is at once payable (s. 14, *supra*).

2. A bequest of chattels to go as heirlooms to the persons for the time being entitled to (*b*) certain real estate, "so far as the rules of law and equity will permit," vests absolutely in the first tenant in tail at birth (but not if his estate is liable to be divested by the birth of issue to take under preceding limitations, and if he dies before his estate becomes indefeasibly vested (*Hogg* v. *Jones*, 32 B. 45)), whether he comes into possession or not (*Trafford* v. *Trafford*, 3 Atk. 347), when Legacy Duty is payable (s. 14).

3. Where a tenant-for-life wishes to sell chattels settled to go with the lands (*quasi heirlooms*) the leave of the Court must be obtained. (See s. 37 of Settled Land Act, 1882; *Re Houghton Hall Estate*, 30 Ch. D. 102; *Re Earl of Radnor*, 45 Ch. D. 402).

As to gifts of specific articles (books, prints, pictures, statues, gems, coins, medals, etc.), to bodies corporate for presentation, and exemption from Legacy Duty, see 39 Geo. 3, c. 73, s. 1.

(*a*) See *Lord-Advocate* v. *Duke of Hamilton*, Law Rep. 29 Sco. L. R. 213.

(*b*) Where to the person actually seized of the real estate, a tenant-in-tail dying before coming into possession is excluded (*Lord Scarsdale* v. *Curzon*, 1 J. & H. 40; approved in *Re Angerstein*, 44 W. R. 152).

HEIRS.

1. A devise to A. and his heirs gives A. the fee, though A. may be a bastard and can, therefore, have only heirs of his body (*Idle* v. *Cook*, 1 P. Wms. 78).

A devise to A. and his lawful heirs carries a fee.

2. To carry the fee no words of limitation ("heirs") have been required in a will since the Wills Act (1 Vict. c. 26), and since the Conveyancing Act of 1881 (s. 51) a fee simple may be given in a deed by the words "in fee simple" only, the word "heirs" being no longer necessary.

3. A gift to the heirs of A. confers an estate in fee simple on the heir of A., and where made after December 31, 1833, or by the will of a person dying after said date, the land will descend on the decease of the heir intestate not to *his* heir but to the next heir of A., in the same manner as if A. had been first entitled to the estate (s. 4 of the Inheritance Act, 3 & 4 Will. 4, c. 106).

4. In a devise of Borough English or gavelkind lands to testator's heir the common law heir takes (*Thorp* v. *Owen*, 2 Sm. & G. 290).

5. A bequest of personalty to testator's heirs or to the heirs of A. *primâ facie* vests in the heir-at-law as a *persona designata*; so in a bequest to A. for life with remainder to his heirs; but "heirs" may be held to mean the next-of-kin according to the statute, as in a bequest to A. or his heirs.

A bequest of personalty to A. and his heirs passes the absolute interest. An annuity given to A. and his heirs remains personalty for all purposes except descent. In a bequest to A. or his heirs; heirs means the persons entitled under the statute (*Vaux* v. *Henderson*, 1 J. & W. 388). See also "Rule in *Shelley's Case*."

HEIRS OF THE BODY.

To give an estate tail by DEED words of inheritance, "heirs," and words of procreation, "of the body," were necessary, the words "issue," "seed," "children," "offspring," etc., merely passing a life estate. Such words, however, were permitted in wills even before the Wills Act, if the intention to confer an estate tail was clear; since the Conveyancing Act, 1881, s. 51, an estate tail may be given in a deed by the words "in tail," "in tail male," "in tail female." See also "Rule in *Shelley's Case*."

Bequest to A., and the heirs of his body gives A. an absolute interest.

Bequest to A. for life, and then to the heirs of his body, and, if he die without issue, over, gives A. an absolute interest.

In a bequest to A. or the heirs of his body; heirs of the body means such of the persons entitled under the statute as may be descendants of A. (*Pattenden* v. *Hobson*, 22 L. J. Ch. 697).

A devise of a personal annuity to A., and the heirs of his body gives A. a fee simple conditional.

HEREDITAMENTS.

Whatsoever may be inherited is a hereditament.

Corporeal hereditaments consist wholly of substantial and permanent objects such as lands and houses, whilst an incorporeal hereditament may be defined as a right issuing out of a thing corporate as annexed to it; as, for example, an advowson, or perpetual right of presentation, a right of fishing in a particular stream, a right of way, or common, a rent-charge issuing out of lands and the like.

HERIOT.

The best beast or other chattel, which by the custom of some copyhold manors the lord has a right to seize on the death or alienation of his tenant, but most

HERIOT—*continued.*

usually on his death. The right of the lord is, however, now limited to such a chattel as the customary law will enable him to take (Scriv. Cap. 254, 5th ed.).

In some manors a composition in money is payable in lieu of a heriot.

Allowance for, made against Succession Duty, see s. 28 of 16 & 17 Vict. c. 51.

HERITABLE BONDS.

A heritable bond is one to which is joined for the creditor's further security a conveyance of land.

A Scotch heritable bond, although it contain a personal obligation to pay the debt, descends to the heir-at-law (*Jerningham* v. *Herbert*, 4 Russ. Chanc. Cas. 388).

All heritable securities in Scotland were at one time real estates, and as such not liable to Inventory Duty.

Money secured on heritable property and by heritable bonds in Scotland was made chargeable with Inventory Duty (23 & 24 Vict. c. 15, s. 6).

Money secured on heritable property in Scotland, and Scottish bonds, excluding executors, were made chargeable with Inventory Duty (23 & 24 Vict. c. 80, ss. 1 and 2). This Act repealed the latter part of the former Act, which made Scotch heritable securities liable to Probate Duty in England and Ireland.

Money secured on heritable property in Scotland, liable as "personal property" to Succession Duty (16 & 17 Vict. c. 51, s. 1).

All heritable securities in Scotland (except when conceived in favour of heirs and assigns excluding executors), made movable as regards succession, so as to be liable to Inventory Duty in the same way as other moveable property (31 & 32 Vict. c. 101, s. 117).

Heritable property is included in the expression "real property," Finance Act, 1894, s. 23 (9).

HISTORY OF THE DEATH DUTIES.

The Probate Duty.

1694. Date of origin of the Probate Duty, the most ancient of the Death Duties. A fixed amount of 5*s.* was imposed upon any probate or administration where the estate was above £20, and was confined in its operation to England and Wales.

This tax was originally granted for four years only "towards carrying on the war against France."

1698 (9 & 10 Will. 3, c. 25). The tax reimposed and increased to a fixed sum of 10*s.*

1779 (19 Geo. 3, c. 66). The first "scale" introduced by Lord North:—

Over	£20	and under	£100	.. .. 10*s.*
„	£100	„	£300	.. .. 30*s.*
„	£300	..	..	.. .. 50*s.*

IRELAND. In 1774 the tax was extended to Ireland: a fixed duty of 5*s.* being imposed where the estate exceeded £30. The Probate Duty in this country was imposed by separate enactments and at lower rates, until by the 5 & 6 Vict. c. 82, and 16 & 17 Vict. c. 59, s. 20, it was assimilated as from Oct. 10, 1842, to that payable in Great Britain. The provisions for regulating the payment of the Probate Duty in Ireland are mostly contained in the 56 Geo. 3, c. 56, and are the same in general as those which are contained in the 55 Geo. 3, c. 184.

HISTORY OF THE DEATH DUTIES—*continued.*

Further additional duties were imposed, and the limits of the ascending scale extended by various Acts:—

23 Geo. 3, c. 58.
29 Geo. 3, c. 51.
35 Geo. 3, c. 30.
37 Geo. 3, c. 90.
41 Geo. 3, c. 86.

1804 (44 Geo. 3, c. 98). This Act repealed duties, previously imposed, and substituted one uniform rate of duty as set forth in Schedule A annexed to the Act, the scale ascending as high as £500,000.

Scotland. By this Act the duty was also extended to Scotland.

1808 (48 Geo. 3, c. 149). Probate and letters of administration made valid as to trust property without stamp; and the Probate Duty in Scotland transferred from the testament to the inventory of the property.

1815 (55 Geo. 3, c. 184). English and Scotch Probate Duties assimilated. A distinction—which lasted until 1880 (43 Vict. c. 14)—made, in point of amount, between the duty payable under a will, and that payable under an intestacy, the duty in the latter case being one-half more than that imposed upon probates.

The rate was uniform, and the limit of the ascending scale £1,000,000.

Penalties were imposed for administering an estate without a grant of representation (s. 37), and an affidavit of value made necessary (s. 38).

This Act contains the principal regulations for the management and collection of the Probate Duty in England. The scale imposed applied to grants taken out before April 1, 1880.

1859 (22 & 23 Vict. c. 36). Repealed the limit fixed in 1815, and imposed a duty of £1500 upon probates, and £2250 upon letters of administration for every £100,000, and any fractional part of £100,000, over £1,000,000, in respect of estates exceeding that amount.

1860 (23 & 24 Vict. c. 15, ss. 4 and 5). Personal estate over which deceased had an absolute power of appointment made liable to Probate Duty; s. 5 making the duty a charge on the property appointed.

1864 (27 & 28 Vict. c. 56). Estates not exceeding £100 in value exempted (s. 5).

1880 (43 Vict. c. 14). Duties on probates and letters of administration assimilated. The scale imposed applied to grants taken out on or after April 1, 1880, and before June 1, 1881.

1881 (44 Vict. c. 12). The Act by which the Probate Duties now in force were imposed. The stamp transferred from the grant itself to the affidavit of value (s. 27); a deduction of debts and funeral expenses allowed in the first instance (s. 28); a fixed sum of 30*s.* may be paid where the gross estate and effects do not exceed £300 (where the deceased died on or after June 1, 1881), and this payment clears any claim for legacy or succession duty on the estate and effects to which the affidavit (or inventory) relates (ss. 33 and 36).

1889 (52 Vict. c. 7). An additional duty, called "Estate Duty" (Temporary Estate Duty), imposed where the estate and effects included in the affidavit (or inventory) exceed £10,000.

Probate Duty (44 & 45 Vict. c. 12) is not payable in respect of property passing on a death on or after Aug. 2, 1894, and chargeable with Estate Duty (Finance Act, 1894, s. 1).

HISTORY OF THE DEATH DUTIES—*continued.*

Subsidiary Acts.

39 & 40 Geo. 3, c. 72, s. 16. Commissioners of stamps may cancel useless probates of wills and letters of administration and allow for the stamps.

5 & 6 Vict. c. 79, s. 23. Return of duty allowed in respect of debts, if claimed within three years.

23 & 24 Vict. c. 5, s. 1. Certain Indian Government promissory notes to be deemed BONA NOTABILIA in England.

24 & 25 Vict. c. 92, s. 3. No return of Probate, Administration or Inventory Duty to be made in respect of voluntary debts.

25 & 26 Vict. c. 22, s. 39. Bond debts for the purposes of the Probate and Administration Duties to be assets as if they were simple contract debts, without regard to the local situation of the bond.

27 & 28 Vict. c. 56, s. 4. Stamp duties on probates, letters of administration and inventories to extend to British ships at sea.

28 & 29 Vict. c. 104, s. 57. As to summary proceedings for recovery of Probate Duty.

31 & 32 Vict. c. 124, s. 7. Mortgage debts on leaseholds may be deducted from the value thereof before probate, etc.; and see s. 28 of 44 Vict. c. 12.

46 & 47 Vict. c. 30, s. 3. Upon the death of a member registered in a Colonial Register, under "The Companies (Colonial Register) Act, 1883," his interest in the company shall be deemed to be part of his estate and effects situated in the United Kingdom. Repealed by 52 & 53 Vict. c. 42, s. 18.

The Legacy Duty.

1780 (20 Geo. 3, c. 28). Act by which originally imposed: at first a tax on the receipt and not on the property itself, and in default of a receipt being given the revenue obtained no duty (*Green* v. *Croft*, 2 Hen. Bl. 30; *Hill* v. *Atkinson*, 2 Mer. 45).

1783 (23 Geo. 3, c. 58); 1789 (29 Geo. 3, c. 51). The amount of the duty increased; wife, children, and grandchildren of the deceased exempted.

1789 (29 Geo. 3, c. 51). The amount again increased.

1796 (36 Geo. 3, c. 52). To put an end to evasions of the duty, Pitt transferred the liability for the duty from the receipt to the property (personal property, including estates *pur autre vie* devolving to executors or administrators) itself.

Differential rates (2, 3, 4, and 6 per cent.) of duty imposed, confined to personal estate derived from persons dying after April 26, 1796.

Legacies under £20 in amount, and "residue" under £100, not taxable.

Husband or wife of the deceased expressly exempted, and no provision made for taxing lineals.

This Act contains the principal regulations for the management and collection of the Legacy Duty in Great Britain.

1804. Increase by Pitt of the differential rates (2½, 4, 5, and 8 per cent.).

1805 (45 Geo. 3, c. 28). Duty extended by Pitt so as to embrace legacies (including rent-charges, annuities, and jointures) charged upon or taking effect out of real estate, and the proceeds of real estate directed to be sold; but now (51 Vict. c. 8, s. 21) legacies of this character (though remaining "legacies," and being still liable to all the laws incidental to legacies) are taxable as successions to personalty. Lineal descendants first made liable (1 per cent.), and the rate payable by strangers in blood increased from 8 per cent. to 10 per cent.

HISTORY OF THE DEATH DUTIES—*continued.*

1808 (48 Geo. 3, c. 149). By this Act the liability to Legacy Duty was imposed upon all personal property derived from any testator or intestate without reference to the date of his death (*Attorney-General* v. *Hancock*, 2 Mee. & W. 563) provided it were "paid, delivered, retained, satisfied, or discharged" after Oct. 10, 1808. A distinction in the rate of duty chargeable was, however, made between property derived from persons who died before, and property derived from those who died after April 5, 1805. "Residue" if of the amount of £20 liable.

1815 (55 Geo. 3, c. 184). Revision of differential rates (1, 3, 5, 6, and 10 per cent.); lineal ancestors first made liable (1 per cent.). The increased rates were imposed upon all legacies or shares of residue from whomsoever derived, "paid, delivered, retained, satisfied, or discharged" after Aug. 31, 1815.

This Act provided, *inter alia*, that each of two or more distinct legacies to the same person, if collectively they are of the value of £20, shall be chargeable, although separately under that amount.

Ireland. The Irish Legacy Duties were chargeable under different Acts and at different rates until 1842, when they were assimilated to those in force in Great Britain. Gifts by testators, domiciled in Ireland, to Irish charities are, however, expressly exempted.

1845 (8 & 9 Vict. c. 76). Definition of "Legacy" extended.

1880 (43 Vict. c. 14). Estates not amounting to £100 (gross) exempted from the duty (s. 13). In practice estates reduced by debts below £100 are similarly relieved.

1881 (44 Vict. c. 12 (June 1, 1881)). Where gross personalty does not exceed £300 the payment of the fixed duty of 30s. clears Legacy and Succession Duty on such personalty (ss. 33, 36).

Lineals relieved from the payment of 1 per cent. Legacy (and Succession) Duty in respect of property which has paid Stamp Duty in conformity with the provisions of this Act (s. 41).

All pecuniary legacies and shares of residue, though not of an amount of value of £20, made liable to Legacy Duty (s. 42).

1894 (57 & 58 Vict. c. 30 (Finance Act, Aug. 2, 1894)). Legacy Duty is not payable at the rate of 1 per cent. in respect of property passing on a death on or after Aug. 2, 1894, and chargeable with Estate Duty (Finance Act, 1894, s. 1), nor payable.

Legacy Duty not payable "where the net value of the property, real and personal, in respect of which Estate Duty is payable.

The Succession Duty.

1853 (16 & 17 Vict. c. 51 (May 19, 1853)). This Act was introduced by Mr. Gladstone "to extend the Legacy Duty to all successions whatever," and practically supplemented the provisions of the Legacy Duty Acts. It imposed duty upon all gifts however made, not already subject to Legacy Duty (*a*); upon all property, whether real or personal, which is disposed of or devolves by operation of law so as to pass to the objects of the gift or to the heir or kindred of the deceased owner upon the death of any person dying after May 19, 1853. The financial results of this Act have been very disappointing.

(*a*) Leaseholds were by this Act taken out of the scope of the Legacy Duty Acts, and made liable to Succession Duty as "real property."

HISTORY OF THE DEATH DUTIES—*continued.*

1881 (44 Vict. c. 12 (June 1, 1881)).

S. 36. Relief from Succession Duty, where the fixed duty of 30s. (s. 33) has been paid on the affidavit or inventory "in respect of the estate and effects to which such affidavit or inventory relates."

S. 41. Cesser of Succession Duty at the rate of 1 per cent. (lineals) in respect of property on which Stamp Duty has been paid.

1888 (51 Vict. c. 8 (July 1, 1888)).

S. 21. Additional rates of duty ($\frac{1}{2}$ per cent. for lineals, $1\frac{1}{2}$ per cent. for collaterals and strangers)—the new rates being $1\frac{1}{2}$, $4\frac{1}{2}$, $6\frac{1}{2}$, $7\frac{1}{2}$, and $11\frac{1}{2}$ per cent.—imposed in respect of successions opening by a death on or after July 1, 1888.

Charges upon or taking effect out of real estate and the proceeds of real estate directed to be sold are by this section made chargeable to Succession Duty at the higher rates, where testator dies on or after July 1, 1888. The imposition of the additional rates does not apply (*a*) to leaseholds (held to include leaseholds for lives), or to property upon which Account Stamp Duty has been paid.

1889 (52 Vict. c. 7 (June 1, 1889)).

S. 6. Imposed Temporary Estate Duty on successions.

S. 10. Amended the law as to allowance under s. 38 of 16 & 17 Vict. c. 51, and repealed the exemption provided by s. 18 of said Act, where the value of a successor's interest is under £20.

S. 12 (1). Limitations of claims to Succession Duty in certain cases.

S. 14. Liability to Succession Duty under a "testamentary document admitted to probate, or under letters of administration, or under a confirmation" to cease after a specified period.

1894 (57 & 58 Vict. c. 30 (Finance Act, Aug. 2, 1894)). The additional succession duties imposed by s. 21 of the Customs and Inland Revenue Act, 1888, and the Succession Duty at the rate of 1 per cent., are not payable in respect of property passing on a death on or after Aug. 2, 1894, and chargeable with Estate Duty (Finance Act, 1894, s. 1).

Succession Duty not payable "where the net value of the property, real and personal, in respect of which Estate Duty is payable" on the death of a person dying on or after Aug. 2, 1894, exclusive of property settled otherwise than by the will of the deceased does not exceed £1000, s. 16 (3).

Successions to real property, on a death on or after Aug. 2, 1894, to be charged with Succession Duty on their "principal value" where the successor is "competent to dispose" (Finance Act, 1894, s. 18; Finance Act, 1896, s. 23).

The Account Stamp Duty.

1881 (44 Vict. c. 12, June 1, 1881), s. 38.

1889 (52 Vict. c. 7, June 1, 1889), s. 11.

Enacted to supplement and prevent evasions of the Probate Duty.

1894. Not payable in respect of property passing on a death on or after August 2, 1894, and chargeable with Estate Duty (Finance Act, 1894, s. 1).

The Temporary Estate Duty.

1889 (52 Vict. c. 7, June 1, 1889).

(*a*) As to other exemptions, see "Exemptions."

HISTORY OF THE DEATH DUTIES—*continued.*

This Act extended the principle of graduated taxation, already introduced into our fiscal system.

Personal estates of £10,000 and upwards pay an extra Stamp Duty (s. 5), and successions exceeding £10,000 in value pay an extra Succession Duty (s. 6).

The charge of this additional duty (called "Estate Duty") is imposed for a period of seven years only, not being payable on a death after May 31, 1896.

1894. Not payable in respect of property paying Estate Duty and passing on or after a death after Aug. 1, 1894.

The Estate Duty.

1894 (57 & 58 Vict. c. 30; Finance Act, 1894; Aug. 2).
1896 (59 & 60 Vict. c. 28; Finance Act, 1896; July 1).
1898 (61 & 62 Vict. c. 10; Finance Act, 1898; July 1).

HOLOGRAPH.

A deed or writing, written entirely by the grantor himself, which on account of the difficulty with which the forgery of such a document can be accomplished, is held by the Scotch law valid without witnesses (*Bell's Scotch Law Dict.*).

HONG KONG.

Date of Order in Council (Finance Act, 1894), May 11, 1895.

Death Duty imposed by "The Stamp Ordinance, 1886" (No. 16 of 1886); "The Stamp Amendment Ordinance, 1894" (No. 13 of 1894).

SCALE.

Where the net value (after deducting debts) does not exceed 5000 dols.	1 per cent.
Ditto ditto exceeds 5000 dols. ..	2 „
Rate of interest on corrective affidavit	7 „

HOTCHPOT.

Hotchpot * is a blending of shares of property. As to personalty (to which it is now confined), it may arise either (*a*) under an express limitation as in a settlement or will, or (*b*) in case of intestacy under the Statutes of Distribution, which provide that where some of the children have previously received a portion or advancement, such children are allowed only so much more out of the intestate's personal estate as will suffice to make their share equal to that of the other children (Wharton's Law Lexicon).

Example of a case of hotchpot arising under a settlement:—

The settlement contains a provision that no child taking any share of the settled fund shall be entitled to any share in the part unappointed, without bringing his or her share into hotchpot, and accounting for the same accordingly.

Unappointed fund, £7200.

The *cestuis que trustent are*: A. (to whom £1000 has been appointed);
B. (to whom £800 has been appointed); and
C. (to whom no share of the fund has been appointed).

* A hotchpot clause will not be implied in a settlement (*Re Alfreton's Trusts*, 52 L. J. Ch. 745). In a will or settlement a power of appointment is frequently given to the parents in favour of any one or more of the children to the exclusion of the others, in which case a hotchpot clause is inserted to prevent a child to whom an appointment has been already made from sharing in the unappointed portion without bringing the appointed share into hotchpot. As to what is deemed an advancement of a portion under the statute, see *Taylor* v. *Taylor*, 23 W. R. 719; *In re Blockley*, 33 W. R. 777.

HOTCHPOT—*continued.*

Let S. represent the share taken by C. of the unappointed fund.
Then S. — £1000 clearly represents the share taken by A.
And S. — £800 the share taken by B.
Therefore S. + (S. — £1000) + (S. — £800) is equal to £7200.
From which we get 3 S. equals £9000;
S. equals £3000 (C.'s share);
S. — £1000 is equal to £2000 (B.'s share); and
S. — £800 is equal to £2200 (A.'s share).

HOUSEHOLD EFFECTS. See "Effects."

HOUSEHOLD GOODS.

Will comprehend all things of the household not fixtures, or of such a nature that they are consumed in being enjoyed, or merely articles used in testator's trade or business.

A gift, however, of household goods or household furniture does not pass furniture at his place of business, where he has also furniture at his private house (*Pratt* v. *Jackson*, 2 P. W. 302).

HUSBAND AND WIFE.

The husband or wife of a deceased person is exempt from **Legacy or Succession Duty.** See "Exemptions."

Where husband and wife take as tenants by entireties on the death of either, no beneficial interest accrues to the survivor so as to create a succession within s. 3 of 16 & 17 Vict. c. 51 (*Moffat* v. *Burnie*, 18 Beav. 21).

Where the wife is entitled (not for her separate use, or under the Married Women's Property Act, 1882) to an expectant succession in leaseholds, and dies in the lifetime of the husband before the succession has fallen into possession, the husband pays Succession Duty as alienee of his wife, at the rate with which she would herself have been chargeable.

The husband is accountable for the duty payable in respect of his **wife's succession** to the extent of the property or funds actually received or disposed of by him (s. 44).

A legatee or successor who has married a relation of the testator is chargeable to the same rate of duty as the wife or husband (s. 11).

A limitation to husband and wife will, under the Married Women's Property Act, make them joint tenants or tenants in common, according to the terms of the limitation, the said Act having in effect abolished tenancy by entireties, as regards estates to which it applies (*In re Marsh, Mander* v. *Harris*, 27 Ch. D. 166).

As to common law rights of husband over the property of his wife, see "Married Women's Property."

Estate Duty and Settlement Estate Duty.

A further Estate Duty (called Settlement Estate Duty) on the principal value of the settled property shall be levied at the rate hereinafter specified, except where the **only life interest** in the property after the death of the deceased is that **of a wife or husband** of the deceased (Finance Act, 1894, s. 5 (1*a*).

Example.

Limitation of fund to A. for life, remainder to B. (the spouse of A.) for life, remainder to C. absolutely. No Settlement Estate Duty payable

HUSBAND AND WIFE—*continued.*

on death of A. leaving B. surviving. Otherwise where C. takes for life, the duty being payable at once on the death of A. (s. 5 (1*a*)).

Where a **husband or wife** is entitled, either **solely or jointly** with the other to the income of any property settled by the other under a disposition which has taken effect before the commencement of this Part of this Act, and on his or her death the **survivor becomes entitled** to the income (*a*) of the property **settled by such survivor,** Estate Duty shall not be payable in respect of that property until the death of the survivor (Finance Act, 1894, s. 21 (5)).

Example.

A. settles property upon B. for life, remainder to A. for life, remainder over. B. dies (after Finance Act), A. surviving. No Estate Duty payable till A.'s death, where A. and B. are husband and wife, and where the disposition takes effect before Aug. 2, 1894 (s. 21 (5)).

Where the ultimate limitations are to A. for life, and as he shall by deed or will appoint, then, in the event of his appointing to himself absolutely, duty is claimed at once.

Estate Duty is not payable where a settlor, who is tenant-for-life, acquires by the death, in his own lifetime, of a subsequent limited owner under the settlement, the immediate reversion, or an absolute power to dispose of the whole property (Finance Act, 1896, s. 14).

Example.

A. settles property upon B. for life, remainder to C. for life, remainder (in events which have happened) to B. in fee. Duty was formerly held to be payable on C.'s death, whereupon B.'s life estate becomes enlarged into a fee simple; but see "Wood Case."

Estate Duty is not payable where the deceased was entitled in right of his wife to the rents of her real estate, and by his death, on or after July 1, 1896, she becomes entitled to the property in virtue of her former interest (Finance Act, 1896, s. 15 (4)), see "Married Women's Property."

I.

ILLEGITIMACY.

1. In gifts to children, a "child," *primâ facie*, means a "legitimate child;" and evidence *dehors* the will is not, generally speaking, admitted to prove that the testator may or must have meant illegitimate children (*Durrant* v. *Friend*, 5 De G. & S. 343). Illegitimate children, however, may take where they have acquired the reputation of being the children of the person named in the gift; if, for example, the bequest is to "the children of A. now living," and A. has, or has died leaving only illegitimate children (*Dover* v. *Alexander*, 2 Hare, 282).

But where the gift is to children of a living person illegitimate children will not take even though such person has only illegitimate children at the date of the will, and at the testator's death there is no possibility of others (*Dorin* v. *Dorin*, L. R. 7 H. L. 568). But a testator may show an intention that illegitimate

(*a*) Held to apply where the surviving spouse becomes entitled to the **capital** as distinguished from the **income** only, if the property be settled by such survivor (*Attorney-General* v. *Strange*, Q. B. D., Aug. 12, 1897); this decision, however, was reversed upon appeal (78 L. T. 516).

ILLEGITIMACY—*continued.*

children are to take, and if he does so they will be included (*Eagleton* v. *Horner*, 57 L. J. Ch. 211).

To determine whether children are legitimate regard must be had to the law of the country where the children are domiciled (*Grey* v. *Stamford*, 1892, 3 Ch. 88; and see *infra.*

2. Where a person dies intestate leaving no legitimate children, or next-of-kin, one moiety of the personalty goes to the widow (if any), the rest to the Crown; but where the Crown becomes entitled upon an intestacy (generally by reason of the illegitimacy of the deceased) it is its custom to grant the property to the persons who would, in case the deceased had been legitimate, have been entitled after deducting the following amounts as the Crown's share, which amounts are for purposes of duty allowed as proper deductions from the value of the property (see also 39 & 40 Vict. c. 18).

	£		£	
When the estate is under	500			$\frac{1}{10}$ is deducted.
„ „ over	500	and under	1000	$\frac{1}{8}$ „
„ „ „	1000	„	5000	$\frac{1}{6}$ „
„ „ „	5000	„	10,000	$\frac{1}{5}$ „
„ „ „	10,000	and upwards		$\frac{1}{4}$ „

See Hanson, 4th ed., 167, 168.

The Intestates Estates Act, 1884 (47 & 48 Vict. c. 71), makes provisions for the waiver by the Crown of its rights where an intestate dies without an heir on application made (s. 6).

3. **Domicile and Legitimacy.**

1. A child born anywhere in lawful wedlock is legitimate.
2. In the case of a gift of **personalty** children need not be legitimate according to English law, if they are legitimate according to the law of their parents' domicile at the time of their birth, and children whose legitimacy has been acquired through the subsequent marriage of their parents, rank as children under the British Legacy and Succession Duty Acts.

A child born out of wedlock of parents domiciled in Holland was subsequently legitimated according to the laws of Holland.

The child was held to share as one of the next-of-kin in the personalty of an intestate dying domiciled here (*In re Goodman's Trusts*, 14 Ch. D. 619, 17 Ch. D. 266).

A British subject domiciled in France devised real estate in England upon trust to sell and to pay the proceeds thereof to his daughters born out of wedlock of a French mother.

They were subsequently legitimated according to French law by the marriage of the father and mother, and were therefore not within the description of "strangers in blood," but were liable to Legacy Duty at 1 per cent. only (*Skottowe* v. *Young*, 8 L. R. 11 Eq. 474).

"The law, as I understand it, is that a bequest of personalty in an English will to the children of a foreigner means to his legitimate children, and that by international law, as recognized in this country, those children are legitimate whose legitimacy is fixed by the laws of the father's domicile. Thus *ante nati*, whose father was domiciled in Guernsey at their birth, and subsequently married the mother so as to make the *ante nati* legitimate by the law of Guernsey, are recognized as legitimate by the law of this country, and can take

ILLEGITIMACY—*continued.*

under such a gift," per Mr. Justice Kay in *In re Andros, Andros* v. *Andros* (24 Ch. D. 637).

A child born out of wedlock cannot be legitimated by the subsequent marriage of its father and mother, unless the domicile of the father, both at the time of the child's birth and at the time of the subsequent marriage, was in a country whose laws allow such legitimation (*Vaucher* v. *Solicitor to the Treasury*; *In re Grove*, 40 Ch. D. (C.A.) 216).

Where there has been no marriage at all between the parents, a foreign law entitling illegitimate children to succeed as such, leaves them strangers in blood under the Succession Duty Act.

An Englishman domiciled in Italy was intestate by Italian law. His illegitimate children (not legitimated by subsequent marriage) were entitled as his natural children to his personal estate in Italy; but he having bequeathed to them realty in this country by a will in English form, they were held liable to Succession Duty at the rate of £10 per cent. (*Atkinson* v. *Anderson*, 21 Ch. D. 100).

In the case of a succession *ab intestato* to **realty** the question of legitimacy must be determined according to English law (*Doe* v. *Vardill*, 2 Cl. & F. 571; 7 Cl. & F. 895).

According to English law real property must devolve upon the heir, who must be the eldest living legitimate son of his father, and must have been born in lawful wedlock.

This rule, however, that a child, born out of wedlock, although legitimated by subsequent marriage, cannot inherit realty in England, is confined to cases of succession *ab intestato* and does not affect the case of a devise of real estate to "children" (*Grey* v. *Stamford* (*supra*)).

Rule as to prohibited degrees.

In lineal relationship all persons in the ascending and descending line in infinitum; and in collateral relationship all persons within the third degree, whether of consanguinity or affinity, are incapable of intermarriage; and for this purpose there is no distinction between blood relations and connections by marriage, between the half blood and the whole (*Reg.* v. *Brighton*, 1 B. & S. 447), or between legitimate children and illegitimate children (*Reg.* v. *St. Giles*, 11 Q. B. 173; *Reg.* v. *Brighton*, *supra*).

By Lord Lyndhurst's Act (5 & 6 Will. 4, c. 54), marriages between persons within the prohibited degrees of consanguinity or affinity are absolutely void. The Jews enjoy special privileges as to marriage in accordance with their own customs, and it is doubtful whether they are caught by this Act. See Hammick's "Marriage Law," p. 163.

Legitimatio per subsequens matrimonium.

According to the law of England, of the Northern States of America, and of all countries governed by the English common law, a child born before the marriage of his parents cannot be legitimated by their subsequent marriage. According to the law of Scotland, of France, and of most countries which have adopted, or have been influenced by the law of Rome, such a child is or may be legitimated by the subsequent marriage of the parents (Dicey's "Conflict of Laws," 498).

IMMOVEABLES.

1. The term is equivalent to realty plus chattels real or leaseholds; "moveables" being equivalent to personalty minus chattels real.

IMMOVEABLES—*continued.*

2. Devolution of, is governed by the *lex situs.*

(*a*) A., a French subject, dies domiciled and resident in Europe, and executes a will in conformity with the formalities required by the Wills Act, but not in conformity with the requirements of the French law. The devise of his real estate and chattels real in England to trustees is valid (*De Fogassieras* v. *Duport*, 1881, 11 L. R. Ir. 123).

[But gift of moveables would be invalid, not being executed in conformity with the testator's *lex domicilii*].

(*b*) A., domiciled abroad, devises English immoveables upon trusts which infringe the rules of English law relating to perpetuity and accumulations. The devise is invalid (*Freke* v. *Lord Carbery*, 16 Eq. 461).

(*c*) A., domiciled in England, devises lands in Italy to English trustees upon trust to sell and invest in English stocks and securities and to hold such investments on certain trusts valid by English law, but invalid by the law of Italy. The right of the trustees to take and sell the land is governed by the *lex situs* (the law of Italy), the validity of the trusts as to the proceeds by the *lex domicilii* (law of England) (*In re Piercy*, (1895) 1 Ch. 83). See Dicey on "Conflict of Laws."

3. Immoveables in the United Kingdom are liable—

(*α*) to **Estate Duty** (Finance Act, 1894, s. 1, and see δ.

(*β*) to **Succession Duty** (16 & 17 Vict. c. 51).

(*γ*) to **Legacy Duty.**

(i.) Leaseholds, when sold.

(ii.) Realty when directed to be sold (45 Geo. 3, c. 28, ss. 4 & 5; 8 & 9 Vict. c. 76, s. 4).

(iii.) Partnership realty where liable to Probate or Estate Duty.

(δ) to **Probate Duty.**

(i.) Leaseholds.

(ii.) Realty, where equitably converted in lifetime of deceased.

(iii.) Partnership realty.

Immoveables situate abroad (apart from partnership realty) are not liable to any Death Duty.

IMPROVEMENTS.

S. 34 of the **Succession Duty Act** enacts (*inter alia*)—

In estimating the value of a succession an allowance shall be made in respect of any moneys which the successor may previously to his possession have laid out in the substantial repairs or permanent improvement of real property comprised in his succession.

Estate Duty.

A. dies before Aug. 2, 1894, and by his will limits real and personal estate upon trust to B. for life, remainder to C. absolutely.

During the life of B. the personal estate or part of it is applied in improving the real estate. On the death of B., after Aug. 1, 1894, a *pro tanto* deduction in respect of the personal estate so applied, would, it is thought, be allowed against Estate Duty.

A tenant-for-life who expends money in repairs and permanent improvements which increases the value of the property does so at his own risk. Otherwise where the expenditure is to preserve the property from destruction or forfeiture (*Dent* v. *Dent*, 30 B. 363; *Hibbert* v. *Cooke*, 1 S. & St. 552; *Re Hotchkys*, 32

IMPROVEMENTS—*continued.*

C. D. 408; *Re Courtier*, 34 C. D. 136). However, instead of expending his own money in improvements a tenant-for-life now expends money borrowed from some Loan Society; and the Improvement of Land Act, 1864, and other subsequent Acts in *pari materia* make the repayment of such moneys a charge upon the lands improved, repayable by instalments (usually twenty-five) by the successive tenants for the time being. Also by the Settled Land Act, 1882, s. 21, capital money arising under the Act may (subject as therein expressed) be laid out or applied in payment of any improvement authorized (see s. 25) by the Act.

IMPROVED LEASEHOLD GROUND RENT.

An improved leasehold ground rent arises where A., a lessee, takes land upon building lease at say £M per annum, and sub-lets to B. at a higher rent, say £N per annum, the improved ground rent being the difference (£N – £M) between what he (A.) receives from B. (the sub-lessee) and what he himself pays to his lessor.

INCOME (Finance Act, 1894, s. 6 (5).

Every estate shall include **all income accrued** upon the property included therein down to and outstanding **at the date of the death** of the deceased.

No income or dividends since the death is to be included, see also "Apportionment."

INCOME TAX AND INCOME TAX ACTS.

Estate Duty and Succession Duty (Agricultural property) (Finance Act, 1894, ss. 6 (8), 7 (5), 18 (2)).

1. Interest **less income tax** was (where Estate Duty was paid on real property by instalments) charged at the rate of 3 per cent. per annum from the date at which the first instalment was due (Finance Act, 1894, 6 (8).

   The words "less income tax" were repealed by s. 40 of the Finance Act, 1896.

2. By s. 7 (5) of the Finance Act, 1894 (proviso), the principal value for the purposes of Estate Duty (and of Succession Duty, s. 18), of "agricultural property" where no part thereof is due to the expectation of an increased income from such property "shall not exceed twenty-five times the annual value as assessed under Schedule A of the Income Tax Acts, after making such deductions as have not been allowed in that assessment (*a*), and are allowed under the Succession Duty Act, etc." (*b*). The Income Tax Acts referred to are the 5 & 6 Vict. c. 35 (1842), and the 16 & 17 Vict. c. 34 (1853).

   The annual value of lands, tenements, hereditaments, or heritages, charged under Schedule A shall be understood to be the rent by the year at which the same are let at rack-rent, if the amount of such rent shall have been fixed by agreement commencing within the period of seven years preceding the fifth day of April next before the time of making assessment, but if the same are not so let at rack-rent, then at the rack-rent at which the same are worth to be let by the year (s. 60 of the Income Tax Act, 1842).

(*a*) The deductions "allowed in that assessment" are land tax (s. 60 of 5 & 6 Vict. c. 35), draining, fencing, or embankment rates (s. 60): expense of making and repairing sea-walls based on an average of the preceding twenty-one years (s. 37 of 16 & 17 Vict. c. 34), parochial assessments (rates, taxes, etc.) by law charged on the occupier and which the landlord has agreed to pay out of rent reserved on any property.

(*b*) Income tax, is not a deduction against Succession Duty (*Re Elwes*, 3 Hurlst. & Norm. 719). As to deductions allowed against Succession Duty, see "Deductions."

INCOME TAX AND INCOME TAX ACTS—*continued.*

Ireland.

The gross annual value for income tax is based on the poor law valuation (5 & 6 Vict. c. 35, s. 13).

Scotland.

As to valuation of lands in Scotland, see 17 & 18 Vict. c. 91; 20 & 21 Vict. c. 58; 42 & 43 Vict. c. 42.

The Metropolis.

The gross annual value for income tax is based on the local taxation valuation (Metropolis Valuation Act, 1869, 32 & 33 Vict. c. 67, s. 45 (2 *b*)).

INCREASE OF BENEFIT.

Any increase of benefit accruing to a person on the extinction of a charge, estate, or interest in property, by the death of another person, or at a period ascertainable only by reference to death, is a "succession," except in the case of persons who, at the time of the passing of the Act, possessed estates subject to outstanding leases for lives, and except in the case of the determination of leases purporting at the date thereof to be leases at rack-rent; and the predecessor is the person from whom the successor derived title to the property charged (ss. 5, 6, 20 of 16 & 17 Vict. c. 51).

INCUMBRANCES.

(*a*) **Estate Duty** (Finance Act, 1894).

In the Finance Act the expression "incumbrances" includes mortgages and terminable charges (s. 22 (1*k*)). Incumbrances on an estate are a deduction from the value of the land or property subject thereto as against Estate Duty thereon, but not "incumbrances created by a disposition **made by the deceased" unless** they were "incurred or created *bonâ fide* for full consideration in money or money's worth wholly for the deceased's own use and benefit and to take effect out of his interest."

An allowance "shall not be made . . . more than once for the same incumbrance charged upon different portions of the estate" (s. 7 (1)).

See also "Ancestral Mortgage," "Locke King's Acts," "Deductions," "Mortgage."

Terminable charges are calculated by the tables annexed to the Succession Duty Act (16 & 17 Vict. c. 51).

(*b*) **Succession Duty** (16 & 17 Vict. c. 51, ss. 34 & 35).

No allowance, in estimating the value of his succession, is made in respect of any incumbrance created by an expectant successor "not made in execution of a prior special power of appointment," unless it be of such a nature as to create a new succession (*In re Peyton*, 7 Hurlst. & Norm. 265). An allowance is, however, made in respect of any moneys which he, previously to his possession, has laid out in the substantial repairs or permanent improvement of the property comprised in his succession. No allowance, moreover, is made in respect of contingent incumbrances, unless they "take effect as an actual burden on the interest of the successor."

A. and B., respectively tenant-for-life and tenant-in-tail in remainder, joined in disentailing and resettling the estate thus (subject to the payment of an annuity to B. during the joint lives of A. and B.): to A. for life, remainder to pay W. (widow of A.) an annuity of £1000 a year for life, remainder to such uses as they should jointly appoint. They exercised the joint power, and

INCUMBRANCES—*continued.*

raised £90,000 on mortgage, partly for A.'s sole benefit, and partly for the joint benefit of A. and B. They also appointed an annuity of £500 to C. (son of B.) for life, and subject thereto to B. for life. The mortgages, considered for the purposes of the Succession Duty Act, were INCUMBRANCES on the succession created by B., and not made "in execution of a prior special power of appointment" within s. 34. B. was, therefore, not entitled upon A.'s death, in 1854, to any allowance in respect thereof. An allowance was, however, made in respect of W.'s annuity (to avoid a double charge of duty, inasmuch as she (W.) was chargeable with duty thereon, as a succession derived from her son), though not in respect of the annuity to C. (**Re Peyton**, 7 Hurlst. & Norm. 265).

INDIA.

1. India Government securities are by 23 & 24 Vict. c. 5, s. 1, made *bona notabilia* in England, where, before the death of the owner, they have been enfaced in India for the purpose of being registered in this country.

In **Pearse** *v.* **Pearse** (**9 Sim. 430**) testator had accepted an offer for the conversion of Indian Government promissory notes to be registered in England; but as the conversion had not been completed when probate was granted, and as the executors could not sue on the notes in this country, it was held that Probate Duty was not payable.

However, bills drawn in India on a London bank are, if the deceased dies abroad before they reach England, assets in England, and liable to Probate Duty (**Attorney-General** *v.* **Pratt, L. R. 9 Ex. 140**).

"The result of all the authorities is that where the assets are beyond the jurisdiction at the time when the right to the duty attaches, duty is not payable on them; when they are in England at the time when the duty attaches duty is payable."—*Per* Kelley, C.B., in this case.

2. In the event of a person, domiciled in the United Kingdom, dying intestate in India, leaving Indian assets only, a grant is taken out by the Administrator-General in India, who, after payment of the debts of the deceased, transmits the surplus assets to the Indian authorities in this country to be distributed to the persons entitled, on proof of payment of any Legacy Duty chargeable therein.
3. Residence abroad (for example in India) in the performance of a public duty, such as that of a judge, military officer or consul does not of itself confer a foreign domicile (*Attorney-General* v. *Napier*, 6 Ex. 217).

Exemption from Estate Duty.

S. 15 (3) of the Finance Act, 1894, enacts that—

"Estate Duty shall not be payable in respect of any pension or annuity payable by the Government of **British India** to the widow or child of any deceased officer of such Government, notwithstanding that the deceased contributed during his lifetime to any fund out of which such pension or annuity is paid."

"The expression 'British India' shall mean all territories and places within Her Majesty's dominions which are for the time being governed by Her Majesty through the Governor-General of India, or through any governor or other officer subordinate to the Governor-General of India" (Interpretation Act, 1889, s. 18 (4)).

To bring a case within the exemption in s. 15 (3), the pension or annuity must be payable and guaranteed by the Government of British India in consideration of members' contributions made compulsorily, and not voluntarily. It is not sufficient that a fund raised by voluntary contributions is

INDIA—*continued.*

administered by such Government acting in the capacity of a benevolent banker taking charge of voluntary subscriptions.

The undermentioned Funds are payable by the Government of British India, and are all in consideration of members' contributions made compulsorily—

Bengal Military Fund.
Bengal Military Orphan Society.
Madras Military Fund.
Madras Medical Fund.
Bombay Military Fund.
Indian Navy Fund.
Bengal Civil Fund.
Madras Civil Fund.
Bombay Civil Fund.
Indian Military Service Family Pensions.
Indian Civil Service Family Pensions.
Regular Widows' Fund.
Elders' Widows' Fund.
India Office Provident Fund.

INFANT.

Legacy Duty.

As to payment of legacy into Court under the provisions of s. 32 of 36 Geo. 3, c. 52, where the legatee is an infant, see "Payment into Court."

As to interest on legacy to an infant, see "Interest."

Examples of Bequests to Minors.—

(*a*) £500 to F. at twenty-one (with a DIRECTION to apply the whole or any part of the interest meantime). The legacy is VESTED and **Legacy Duty** is chargeable on the £500 as an absolute legacy to F. (*a*)

(*b*) £600 to G. if and when he attains twenty-one (with POWER to apply the whole or any part of the interest meantime).

This legacy is a CONTINGENT legacy; but if the residuary legatee is liable to the SAME RATE of duty, duty is payable on the £600 as an absolute legacy; if liable to a DIFFERENT RATE of duty, then, if to a HIGHER rate than G., duty is payable absolutely, subject to a readjustment should the legacy not vest; but if the residuary legatee is liable to a LOWER rate or is liable to duty by way of annuity, duty is payable on the interest applied from time to time (see *Re Wintle*, *supra*).

(*c*) £700 to H. payable at twenty-one.

The payment of the legacy which is vested is deferred till H. attains twenty-one, when duty is payable, unless the residuary legatee is liable to the same rate of duty, when duty is payable on the legacy as if an immediate gift. Should H. die under twenty-one his representatives will be entitled.

(*d*) £800 to J. at twenty-one or marriage. This legacy is CONTINGENT and no duty is payable on the *corpus* till J. attains twenty-one or marries.

In (*c*) and (*d*) the interim interest accrues to the residuary legatee, and if liable to a different rate of duty, duty will be payable by the residuary legatee on the value of the interim benefit accruing to him (see Form No. 3, p. 3; and "Accretions").

Estate Duty and Succession Duty.

An infant is "competent to dispose" (*q.v.*) within the meaning of the Succession Duty Act, 1853 (s. 21) and the Finance Act, 1894, ss. 2 (1*a*): 22 (2*a*),

(*a*) Not vested where the trustees are only empowered to apply income meantime, so that here a child dying under 21 would not take a vested share (*Wintle re*, *Tucker* v. *Wintle*, 45 W. R. 91).

INFANT—*continued.*

provided he would, if *sui juris*, be so competent (*Attorney-General* v. *Hallett*, 2 Hurlst. & N. 368).

Incapacity of—

Under s. 7 of the Wills Act the will of an infant made since Dec. 31, 1837, is void.

An infant may, at fifteen, alienate (by feoffment only) gavelkind land.

An infant may, by instrument *inter vivos*, make a valid appointment, in exercise of a power, of both real estate and personal estate; but in the case of real estate the power must be simply collateral, that is, the infant must have no interest in the lands appointed (*Hearle* v. *Greenbank*, 3 Atk. 716).

By the Infant Settlements Act, 1855, a male infant (who has attained twenty) and a female infant (who has attained seventeen) may, with the sanction of the Court, settle, or contract to settle, property, real or personal, whether in possession or in expectancy.

However, an appointment or disentailing assurance executed under the Act by an infant tenant-in-tail, becomes void by a subsequent death under age (*Re Scott, Scott* v. *Hanbury* (1891), 1 Ch. 298).

Representation.

Where a minor is sole executor, administration with will annexed is granted to his guardian during his minority.

Where the next-of-kin is a minor, administration *durante minore ætate* is granted to his guardian.

Conversion of Property of Infant.

A guardian must not change the nature of the infant's property, except where necessary for the infant's benefit, and where such a conversion is allowed the representatives who would have taken before the conversion still take, provided the infant dies under age (*Foster* v. *Foster*, 1 Ch. D. 588; *Jackson* v. *Talbot*, 21 Ch. D. 786).

INFORMER.

S. 31 of the 36 Geo. 3, c. 52, enacts that—

The party or parties paying or satisfying any legacy or any residue of any personal estate, or any part of such residue, or receiving the same contrary to the provisions of this Act, who shall within the space of twelve calendar months after the offence committed **discover** the other party or parties offending therein, so that such party or parties so discovered be thereupon convicted, such person **so discovering** shall be indemnified and discharged from all penalties incurred for any offence against this Act, see also 36 Geo. 3, c. 52, s. 44;

S. 32 of 53 & 54 Vict. c. 21 enacts that, the Commissioners may at their discretion **reward any person who informs** them of any offence against any Act relating to inland revenue or assets in the recovery of any fine or penalty, provided that a reward exceeding £50 shall not be paid in any case without the consent of the Treasury.

INLAND REVENUE AFFIDAVIT.

The expression "Inland Revenue Affidavit" means an affidavit made under the enactments specified (*a*) in the second schedule to this Act, with the account and schedule annexed thereto (Finance Act, 1894, s. 22, 1 n.).

(*a*) 55 Geo. 3, c. 184, s. 38; 56 Geo. 3, c. 56, s. 117; 43 Vict. c. 14, s. 10; 44 Vict. c. 12, ss. 29 & 32.

INLAND REVENUE AFFIDAVIT—*continued.*

All affidavits, accounts, certificates, statements, and forms used for the purpose of this Part of this Act shall be in such form, and contain such particulars, as may be prescribed, and if so required by the Commissioners shall be in duplicate, and accounts and statements shall be delivered and verified on oath and by production of books and documents in the manner prescribed, and any person who wilfully fails to comply with the provisions of this enactment shall be liable to the penalty above in this section mentioned (s. 8 (14)).

The executor of the deceased shall pay the Estate Duty in respect of all personal property (wheresoever situate) of which the deceased was competent to dispose at his death on delivering the Inland Revenue Affidavit (s. 6 (2)).

See further, "Affidavit."

INSTALMENTS.

(i.) **Legacy Duty.**

The duty on legacies given by way of annuity is payable by **four equal yearly** instalments, the first of which "shall be made before or on completing the payment of the first year's annuity" (36 Geo. 3, c. 52, s. 8).

(ii.) **Succession Duty.**

(*a*) **Under Succession Duty Act, 1853.**

1. Where the successor became entitled in possession at a death before July 1, 1888, the duty is payable by eight equal half-yearly instalments, the first to be paid twelve months after the successor shall have become entitled in possession, and the seven following instalments at half-yearly intervals of six months each. Interest at the rate of 3 per cent. per annum is payable upon the amount of all instalments in arrear.

2. Where the successor became entitled in possession at a death on or after July 1, 1888, except where the deceased died after Aug. 1, 1894, and the successor is **competent to dispose** of the property within the meaning of the Finance Act, 1894, the duty is payable:—

   (*a*) By eight equal half-yearly instalments as above; or,

   (*b*) At the option* of the successor, by two equal moieties, whereof the first moiety shall be paid by four equal yearly instalments, the first to be paid at the expiration of twelve months next after the successor shall have become entitled to the beneficial enjoyment of the property, and the three following instalments at yearly intervals thereafter; and the second moiety shall be paid on the day for payment of the last instalment of the first moiety, or, if not so paid, shall be payable by four equal yearly instalments, with interest at the rate of 3 per cent. per annum from such last-mentioned day on so much of the second moiety as shall for the time being remain unpaid, the first of such instalments, with the interest, to be paid at the expiration of twelve months from that day.

* This option can only be exercised once, on the delivery of the account or affidavit, and whichever mode of payment was then adopted must be adhered to, unless the whole of the unpaid duty and interest is paid, and the claim discharged.

INSTALMENTS—*continued.*

3. A successor entitled to his succession upon the death of a person dying before July 1, 1888, has the above option (at 2 (*b*)), if no instalment of duty has become due from him at that date, or if only one such instalment has become due from him, and has been paid before that date.

The instalments in respect of annuities and life estates (not continuing interests) do not become payable unless the annuitant or life tenant outlives the day on which the instalment falls due.

Where the successor elects to pay by yearly instalments, and dies after the first, but before the second yearly instalment falls due, then where eighteen months have elapsed since testator's death, duty will be payable on the second instalment (s. 22 (3 b) of 51 Vict. c. 8). Similarly with regard to the other instalments.

As to the discount allowed where duty, payable by instalments, is paid in advance under the provisions of s. 40 of 16 & 17 Vict. c. 51, see "Discount."

Where a successor is "competent to dispose by will of a continuing interest" in the property subject to duty, and dies before all the instalments of duty have become payable, "the instalments unpaid at his death shall be a continuing charge on such interest, in exoneration of his other property, and shall be payable by the owner for the time being of such interest" (s. 21 of 16 & 17 Vict. c. 51).

Cases where all the instalments of duty are payable—

1. Devise to A. in fee simple. [But where A. takes in remainder, and while so entitled re-settles the property, and cuts down his interest to a life-estate, his title being under the new disposition, only the instalments which actually become due are payable. And where A. takes for life only, but subsequently acquires the fee, which he retains till his death, the same rule applies].
2. Devised to A. in tail, and A. disentails.
3. Devise to A. for life, and as he shall by will appoint, notwithstanding he omits to exercise the power.
4. Devise to A. and B. as joint tenants, and A. or B. severs.
5. Devise of a perpetual rent-charge.

As to return of overpaid instalments of duty where duty has been paid in advance, see "Rectification of Duty."

Where duty is payable at once, and not by instalments—

1. Legacy or share of residue.
2. Legacy to purchase an annuity.
3. Annuity directed to be purchased, the value on which the duty is payable being ascertained by reference to the tables annexed to the Succession Duty Act.
4. Legacy to different persons in succession, liable to the same rate of duty.
5. Gift of personalty (to be applied in the purchase of real estate) to a person absolutely.
6. Similar rules apply with regard to successions to personalty (s. 32 of 16 & 17 Vict. c. 51).
7. In successions to real property, duty is payable at once on the proceeds of sale of advowsons (s. 24) and of timber (s. 23); also where the successor is a body corporate, company or society (s. 27),

INSTALMENTS—*continued.*

and where successions are commuted under the provisions of s. 41.

(*b*) **Under Finance Act, 1894.**

S. 18 (1) enacts that—

The value for the purpose of Succession Duty of a succession to real property arising on the death of a deceased person shall, where the successor is **competent to dispose** of the property, be the **principal value** of the property, after deducting the Estate Duty payable in respect thereof on the said death, and the expenses, if any, properly incurred of raising and paying the same; and the duty shall be a charge on the property, and shall be payable by **the same instalments as are authorized by this Act for Estate Duty on real property,** with interest at the rate of 3 per cent. per annum; and the first instalment shall be payable and the interest (3 per cent.) shall begin to run at the expiration of twelve months after the date on which the successor became entitled in possession to his succession, or to the receipt of the income and profit thereof, and after the expiration of the said twelve months the provisions with respect to discount shall not apply.

(iii.) **Estate Duty (Finance Acts, 1894, 1896).**

. . . the (Estate) duty due upon an account of real property may, at the option of the person delivering the account, be paid by eight equal yearly instalments, or sixteen half-yearly instalments, with interest at the rate of 3 per cent. per annum, from the date at which the first instalment is due, and the first instalment shall be due at the expiration of twelve months from the death, and the interest on the unpaid portion of the duty shall be added to each instalment and paid accordingly; but the duty for the time being unpaid, with such interest to the date of payment, may be paid at any time, and in case the property is sold, shall be paid on completion of the sale, and if not so paid shall be duty in arrear (57 & 58 Vict. c. 30, s. 6 (8), as amended by 59 & 60 Vict. c. 28, Sched., Part III.

The Estate Duty in respect of any annuity or other definite annual sum, whether terminable or perpetual, referred to in s. 2 (1) (d) of 57 & 58 Vict. c. 30, may, at the option of the person delivering the account, be paid by four equal yearly instalments, the first of which shall be due at the end of twelve months from the date of the death, and after the end of those twelve months, interest on the unpaid portion of the duty shall be added to each instalment and paid accordingly, but the duty for the time being unpaid, with interest to the date of payment, may be paid at any time (59 & 60 Vict. c. 28, s. 16).

Simple interest at the rate of 3 per cent. per annum without deduction for Income Tax shall be payable upon all Estate Duty from the date of the death of the deceased, or, where the duty is payable by instalments, or becomes due at any date later than six months after the death, from the date at which the first instalment or the duty becomes due, and shall be recoverable in the same manner as if it were part of the duty (59 & 60 Vict. c. 28, s. 18 (1)).

Where Estate Duty (to be paid by instalments) on the real property is paid on the delivery of the affidavit leading to the grant, then if at the time of the delivery of the affidavit not more than twelve months have expired since the

INSTALMENTS—*continued.*

date of the deceased's death, the whole duty should be carried out, or $\frac{1}{8}$, or $\frac{1}{16}$ of it, according as the duty is to be paid by yearly, or by half-yearly instalments. No interest is chargeable.

Where, however, at the time of the delivery of the affidavit more than twelve months have expired since the date of the deceased's death, the duty on the real property is chargeable with interest. The interest is chargeable upon the whole unpaid duty, from twelve months after the deceased's death up to the date of payment of an instalment thereof, although part only of the duty may be overdue (s. 6 (8)). Where the duty is elected to be paid by instalments, and payment is not made on a date when an instalment becomes payable, the interest upon the whole duty is to be calculated up to the date when the last overdue instalment was payable, and interest from that date is to be calculated upon the overdue instalments.

(iv.) **Generally.**

Discount at the rate of 3 per cent. per annum is allowed upon the amount of all instalments paid in advance; but not upon Estate Duty on real estate paid before the expiration of twelve months from the death.

The rate of interest upon Succession Duty in arrear is fixed at 3 per cent. per annum by the Finance Act, 1896 (59 & 60 Vict. c. 28, s. 18 (2)).

The liability to account for and pay instalments as they fall due in no way depends upon application being made by the Commissioners; but the accounting parties should then, themselves, fill up and forward the proper form to the Legacy Duty Office, Somerset House, London, W.C., where, or at any Money Order Post Office outside the Metropolitan Postal District, forms can be obtained.

INTEREST.

1. **Stamp Duty.**

(*a*) *Probate Duty.*

Interest to the date of the grant must be included in the Account No. 1, annexed to the affidavit leading to such grant (*Partington* v. *Attorney-General*, L. R. 4 H. L. 100). The same principle is held to apply where Account Stamp Duty is payable, and accretions to the date of delivery of the Account should be included therein. But see "Accretions."

(*b*) *Estate Duty* (Finance Act, 1894).

i. **On Personalty.**

Interest at the rate of 3 per cent. is charged from the date of the death to the date of delivery of the Inland Revenue Affidavit or Account. (*a*)

In **Fixed Duty** cases no interest is charged where the duty is paid within twelve months from the death. Otherwise, interest is reckoned from the death.

(*a*) The date of delivery as regards the original affidavit of Inland Revenue is when the affidavit (and the duty thereon) is delivered to the proper officer or posted to him; and as regards accounts and corrective affidavits, when presented for examination and assessment, provided they are not returned for material alteration, that there is no unreasonable delay in their retransmission, and that the duty is paid within 21 days from the date of the assessment.

Where the 21 days are allowed to expire, a fresh assessment will be necessary, and interest will be calculated up to the date of such reassessment.

INTEREST—*continued.*

ii. **On Real Property.**

Interest, however, is not charged on real property (whether assessed on the affidavit or on an account) until the expiration of twelve months from the death, except as to any part thereof previously sold, when the interest dates from the completion of the sale, if within the twelve months, s. 6 (8).

If at the time of the delivery of the affidavit *not more than* twelve months have expired since the date of the deceased's death, the whole duty should be carried out, or $\frac{1}{8}$th, or $\frac{1}{16}$th of it, according as the duty is to be paid in one sum, or by yearly, or by half-yearly instalments. No interest is chargeable.

Where, however, at the time of the delivery of the affidavit *more than* twelve months have expired since the date of the deceased's death, the duty on the real property, whether it is to be paid in one sum, or by instalments, is chargeable with interest. The interest is chargeable upon the *whole* unpaid duty, from twelve months after the deceased's death up to the date of payment of the duty or of an instalment thereof, although part only of the duty may be overdue (s. 6 (8)). Where the duty is elected to be paid by instalments, and payment is not made on a date when an instalment becomes payable, the interest upon the whole duty is to be calculated up to the date when the last overdue instalment was payable, and interest from that date is to be calculated upon the *overdue* instalments.

2. **Legacy and Succession Duty.**

The principle of accounting for interest or accretions to date of assessment applies here also where duty is payable upon the *corpus.*

As to accretions between the death and the delivery of the Residuary Account (*Attorney-General* v. *Cavendish*, Wightw. 82).

As to interim interest on a legacy (*Nisbett's Trustees* v. *Learmonth*, 8 Sco. Sess. Ca. 2nd Ser. 69).

As to rents accruing between the time when the legatee became entitled to the possession of the leasehold property specifically bequeathed to him and the time of accounting for and payment of the duty (*Bate* v. *Payne*, 13 Q. B. D. 900).

Where the property is administered by the Court the duty is payable on all that the legatees receive, whether for principal or for interest (*Thomas* v. *Montgomery*, 3 Russ. 502).

Accumulations made by the direction of testator are liable to duty (*Advocate-General* v. *Oswald*, 10 Sco. Sess. Ca. 2nd Ser. 969).

Where Legacy or Succession Duty is payable on the proceeds of realty directed to be sold (Form No. 8), rents to date of sale and interest on proceeds from date of sale to date of account should be accounted for. And where Succession Duty is payable on the *corpus* of settlement funds (Form No. 4) dividends and interest from the death must be included.

The Crown was formerly entitled by the provisions of s. 9 of 31 & 32 Vict. c. 124 to 4 per cent. duty on arrears of Legacy and Succession Duty; and by 52 Vict. c. 7, s. 8 (2) to interest at 4 per cent. on arrears of Temporary Estate Duty. But see s. 18 (2) Finance Act, 1896 (*infra*).

3. **Interest on Legacies.**

(*a*) General rule:—Legacies, in the absence of any direction to the contrary,

INTEREST—*continued.*

carry interest after the expiration of one year from the testator's death.

A legacy to an executor, *quâ* executor, carries interest from the time when he assumes the office (*Angermann* v. *Ford*, 29 B. 349).

A legacy to a wife, though given in lieu of jointure, or of dower and free bench, does not carry interest until a year from the death (*In re Bignold*, *Bignold* v. *Bignold*, 45 Ch. D. 496).

A direction to executors to pay a legacy as soon as possible will not take the case out of the rule.

Where a legacy was given to an *infant quâ* executor, it was held that interest did not begin to run until he had attained his majority (*Long* v. *Gardner*, 41 W. R. 203).

(*b*) Exceptions.

The following carry interest from the death :—

A fund directed to be set apart from the rest of testator's estate (*Dundas* v. *Wolfe-Murray*, 1 H. & M. 425).

Legacy charged on land, except where land directed to be sold (*Spurway* v. *Glynn*, 9 Ves. 483).

Legacy to an infant child, or to one to whom testator stands *in loco parentis*.

Legacy to an infant (though a stranger), where maintenance is given out of the legacy.

Legacy given in satisfaction of a debt, which debt bore interest.

A specific legacy (*Barrington* v. *Tristram*, 6 Ves. 345).

Where in a bequest the gift of interest vests the *corpus*, see "Vesting."

4. **Death Duties generally.**

Rate of interest fixed at 3 per cent. by s. 18 (2) of Finance Act, 1896.

By s. 18 (3) the Commissioners have power to remit interest where the amount is too small "to repay the expense and trouble of calculation and account."

5. The rule of the Court as to the calculation of interest at 4 per cent. in applying the doctrine of *Howe* v. *Earl of Dartmouth*, and in other cases where an apportionment becomes necessary between tenant-for-life and remainderman has been varied by Kekewich, J., who substituted 3 for 4 per cent. as the rate of interest in the cases of *Re Goodenough*, *Marsland* v. *Williams* (1895) 2 Ch. 537; *re Duke of Cleveland's Estate*, *Hay* v. *Wolmer* (1895) 2 Ch. 542. But see *Re Dallmeyer* (1896) 1 Ch. 372, 396; *Wassell* v. *Leggatt* (1896) 1 Ch. 554, where this deviation from the old rule was not followed.

As to payment of interest on excess duty where over-payment due to over-valuation by the Commissioners, see s. 8 (12).

See also ss. 10 (3), (4).

INTEREST IN EXPECTANCY.

Estate Duty.

1. *Definition* (Finance Act, 1894, s. 22 (1 *j*)).

The expression "interest in expectancy" includes an estate in remainder or reversion and every other future interest whether vested or contingent, but does not include reversions expectant upon the determination of leases.

An interest in expectancy—whether personalty or realty—being "property of which the deceased at his death was competent to dispose" (s. 2 (1*a*)), is "deemed to pass" on the death of the deceased.

INTEREST IN EXPECTANCY—*continued.*

Examples.

(1) Fund settled by A. upon B. for life (*ob.* Jan. 1, 1895); then upon C. for life (*ob.* Jan. 1, 1896); remainder to B. absolutely.

The fund actually passes under the settlement in the hands of the trustees, and Estate Duty is only paid once on the settled fund and the reversion (s. 7 (10)).†

(2) If C. in example (1) takes absolutely and dies on Sept. 1, 1894 Estate Duty is here payable on C.'s death on his interest in expectancy, and also, it would appear, again on B.'s death in 1895.

2. *Value for rate and duty.*

Where an estate includes an **interest in expectancy** Estate Duty in respect of that interest is to be paid, at the option of the person accountable for the duty, either with the duty on the rest of the estate or when the interest falls into possession (s. 7 (6)). If the duty is not paid with the Estate Duty on the rest of the estate, then for the purpose of determining the rate of Estate Duty in respect of the rest of the estate, the value of the interest is to be its value at the date of the death of the deceased (s. 7 (6) (*a*)). The rate of Estate Duty upon the interest when it falls into possession is to be calculated according to its value at that time, together with the value of the rest of the estate as previously ascertained (s. 7 (6) (*b*)).

For example, A. dies in 1895. The value of his free estate in possession is £8000; of his interest in expectancy, £1500. The rate of duty for the £8000 is 3 per cent.; for the £1500 (if payment of duty not deferred) also 3 per cent. But if the payment is deferred, and the value, when it falls into possession, of the interest in expectancy is, say, £3000, then its rate (4 per cent.) is determined by the aggregate £8000 and £3000 = £11,000.

3. *Commutation of*—

The Commissioners, in their discretion, upon application by a person entitled to an interest in expectancy, may commute the Estate Duty which would or might, but for the commutation, become payable in respect of such interest for a certain sum to be presently paid, and for determining that sum they will put a present value upon that duty, regard being had to the contingencies affecting the liability to, and rate and amount of, such duty (s. 12).

4. *Mortgage or sale of*—

Where an interest in expectancy has, before Aug. 2, 1894, been *bonâ fide* sold or mortgaged for full consideration in money or money's worth, then no other duty on such property is payable by the purchaser or mortgagee when the interest falls into possession than would have been payable if the Finance Act, 1894, had not passed. In the case of a mortgage, any higher duty payable by the mortgagor is to rank as a charge subsequent to that of the mortgagee (s. 21 (3)).

Examples.

Fund settled by A. upon B. for life (*ob.* Jan. 1, 1895); remainder to C. absolutely; C. sells to D. before Aug. 2, 1894.

† Property passing on any death shall not be aggregated more than once, nor shall Estate Duty in respect thereof be more than once levied on the same death (s. 7 (10)).

INTEREST IN EXPECTANCY—*continued.*

(i.) D. dies before Aug. 2, 1894. No Estate Duty on B.'s death (s. 21 (3)).

(ii.) D. dies after Aug. 1, 1894, predeceasing B. Estate Duty on D.'s death on the value of his interest in expectancy. No Estate Duty on B.'s death.

(iii.) D. settled the interest in expectancy on himself for life; remainder to E. for life; remainders over. Estate Duty payable on B.'s death. See also "Estate Duty," Examples, No. vi.

The sale of an interest in expectancy before the Act does not, however, exonerate the *purchaser* (*q.v.*) from Succession Duty. Where, however, there are two successive life interests, and both determine after the Act, Estate Duty is payable by the second tenant-for-life, when the first tenant-for-life dies, and on falling into possession, the purchaser or mortgagee (though exempt from Estate Duty, s. 5 (2)) takes the property subject to the charge on the property in respect of such Estate Duty made under the provisions of s. 9 (6). (*b*)

5. *When it forms an "estate by itself."*

Where the property, the subject of the interest in expectancy, forms an "estate by itself" then if it is chargeable at the **same** or a **higher** rate of Estate Duty than the aggregated "one estate," the **whole** value of the interest in expectancy should be deducted. But if the "estate by itself" is chargeable at a **lower** rate, then only so much of the value of the interest as represents that lower rate should be deducted. Thus, if the "estate by itself" is chargeable at 3 per cent., and the aggregated "one estate" at 4 per cent., deduct three-fourths, and if the rates are 4 per cent. and 5 per cent. respectively, deduct four-fifths, and so on. See "Estate Duty," Examples, No. viii.

6. *Reverter to Disponer.*

S. 15 of the Finance Act, 1896, enacts that—

1. "Where by a disposition of any property an interest is conferred on any person other than the disponer for the life of such person, or determinable on his death, and such person enters into possession of the interest, and thenceforward retains possession thereof to the entire exclusion of the disponer, or of any benefit to him by contract or otherwise, and the only benefit which the disponer retains in the said property is subject to such life or determinable interest, and no other interest is created by the said disposition, then, on the death of such person after the commencement of this part of this Act (July 1, 1896), the property shall not be deemed for the purpose of the principal Act to pass by reason only of its reverter to this disponer in his lifetime.

2. "Where by a disposition of any property any such interest as above in this section mentioned is conferred on two or more persons, either severally or jointly, or in succession, this section shall apply in like manner as where the interest is conferred on one person.

3. "Provided that the foregoing sub-sections shall not apply where such person or persons taking the said life or determinable interest had

(*b*) A person having a limited interest in any property, who pays the Estate Duty in respect of that property, shall be entitled to the like charge, as if the Estate Duty in respect of that property had been raised by means of a mortgage to him (s. 9 (6)).

INTEREST IN EXPECTANCY—*continued.*

at any time prior to the disposition been himself or themselves competent to dispose of the said property."

Examples.

Settlement by A. upon B. for life (*ob.* July 2, 1896), and on his death to revert to A. his heirs, executors, administrators, and assigns.

1. A. survives B. By s. 15 (1) the property is not "deemed to pass on B.'s death."
2. A. predeceases B. Estate Duty is payable on B.'s death on the settled property, in addition to Probate Duty (if personal property) or Estate Duty—according as A.'s death is prior or subsequent to the Finance Act—on A.'s death, he being then "competent to dispose thereof, and whether such Probate or Estate Duty was paid in respect of the property as a reversion, or falls to be paid in respect of it on falling into possession."

See also "Reversionary Interests, Alienation of."

Probate Duty (and Legacy Duty).

An interest in expectancy is, where personalty, liable to Probate Duty (*Lord* v. *Colvin*, L. R. 3 Eq. 737), and Legacy Duty.

As to alienation of, reversionary interests in personalty or realty, and the effect thereof on the liability to, and payment of Legacy Duty or Succession Duty, see "Reversionary Interests, Alienation of."

Where tenant-for-life and remainderman are liable to the same (different) rates of duty, see "Different Persons in Succession, Gifts to."

J.

JEWS.

A bequest to members of the Jewish persuasion to enable them to observe its rites is valid (9 & 10 Vict. c. 59, s. 2; *Straus* v. *Goldsmid*, 8 Sim. 614).

JOINT DISPOSITION. See "Joint Predecessor."

JOINT GRANTS.

The Court prefers a sole administration to a joint administration. It will, therefore, grant administration to that next-of-kin or to that residuary legatee (where there are several) who first applies.

Joint grants when made are ordinarily limited to three, and on the death of one the right of administration accrues to the survivors or survivor.

The Court has, however, no power to limit the number of executors who shall act (Tristram and Coote's "Probate Practice," 12th ed.).

JOINT INVESTMENT.

Liability of property invested in joint names—

(*a*) **To Succession Duty** (s. 3 of 16 & 17 Vict. c. 51).

Where any persons shall, at or after the time appointed for the commencement of this Act, have any property **vested in them jointly,** by any title not conferring on them a succession, any beneficial interest in such property accruing to any of them by survivorship shall be deemed

JOINT INVESTMENT—*continued.*

to be a succession; and every person to whom any such interest shall accrue shall be deemed to be the successor; and the person upon whose death such accruer shall take place shall be deemed to be the predecessor; and where any persons after the time appointed for the commencement of this Act shall take any succession jointly, they shall pay the duty, if any, chargeable thereon by this Act in proportion to their respective interests in the succession; and any beneficial interest in such succession accruing to any of them by survivorship shall be deemed to be a new succession, derived from the predecessor from whom the joint title shall have been derived. See "Joint Tenancy."

(*b*) **To Account Stamp Duty** (s. 38 (1*b*) of 44 Vict. c. 12, as amended by s. 11 (1) of 52 Vict. c. 7).

S. 38 (1*b*) of 44 Vict. c. 12 enacted that the following description of the personal or moveable property shall be included in an account:—

Any property which a person dying on or after such day having been absolutely entitled thereto, has voluntarily caused, or may voluntarily cause to be transferred to or **vested** in himself and any other person **jointly** whether by disposition or otherwise, so that the beneficial interest therein or in some part thereof passes or accrues by survivorship on his death to such other person.

Amendment by s. 11 (1) of 52 Vict. c. 7—

The description of property marked (*b*) shall be construed as if the expression "to be transferred to or vested in himself and any other person" included also any purchase or investment effected by the person who was absolutely entitled to the property either by himself alone, or in concert, or by arrangement, with any other person.

Examples.

1. Leaseholds (value £950) assigned to deceased (*ob.* Aug. 5, 1887) and his brother, G., each having found one-half of the purchase money.

   Account Stamp Duty and Succession Duty (ss. 1 and 3 of 16 & 17 Vict. c. 57) 3 per cent., not 4½ per cent. (see proviso to s. 21 of 51 Vict. c. 8) on the MOIETY accruing to G. by survivorship.

2. Twenty-five shares in the London and County Bank, purchased in the joint names of the deceased (who found the whole of the purchase money) and his son, H., Account Stamp Duty payable on the whole accruing to H. (exempt from Succession Duty by s. 41 of 44 Vict. c. 12) by survivorship.

3. £12,000 Consols transferred by the deceased (*ob.* Aug. 19, 1889, and owner of whole fund) into the joint names of himself and sister, L.

   Account Stamp Duty, Temporary Estate Duty (52 Vict. c. 7, s. 5, sub-s. 2), and Succession Duty (3 per cent.) on the whole fund.

(*c*) **To Estate Duty.** Finance Act, 1894, s. 2 (1*c*).

The Finance Act, 1894, s. 2 (1*c*) enacts that property passing on the death of the deceased shall be deemed to include (*inter alia*)—

Property which would be required on the death of the deceased to be included in an account under s. 38 of the Customs and Inland Revenue

JOINT INVESTMENT—*continued.*

Act, 1881, 44 & 45 Vict. c. 12, as amended by s. 11 of the Customs and Inland Revenue Act, 1889, 52 & 53 Vict. c. 7; if those sections were herein enacted and **extended to real property** as well as personal property, and the words "**voluntary,**" and "**voluntarily,**" and a reference to a "volunteer" were **omitted** therefrom.

Purchase in Joint Names.

Where there is a purchase or investment by A. in the joint names of himself and wife (*a*), or of himself and child (*b*), or of himself and another to whom he stands in *loco parentis* (*c*), the law presumes an intention on the part of A. to make a provision for such wife or child or other person. This presumption may be rebutted. On the other hand, where the transfer is into the names of the transferor and a stranger, the presumption of a resulting trust may be equally rebutted, especially where there is evidence of an intention to benefit.

In a recent case, the plaintiff, A., transferred, in 1880, £6000 consols into the joint names of herself and her godson, B., the defendant. This transfer was made with the express intention that B., in the event of his surviving her, should have the consols; but that she, A., should take the dividend during her life. It was held there was no resulting trust, the evidence showing that she did not intend to make B. a mere trustee for her, except as to the dividends.

"Though the defendant was the nephew of the first husband of the plaintiff, she was not in *loco parentis* to him, and the rule is well settled that where there is a transfer by a person into his own name jointly with that of a person who is not his child, or his adopted child, then there is, *primâ facie*, a resulting trust for the transferor. But that is a presumption capable of being rebutted by showing that, at the time, the transferor intended a benefit to the transferee; and in the case there is ample evidence that at the time of the transfer, or for some time previously, the plaintiff intended to convey a benefit, by this transfer, on her late husband's godson" (*per* Cotton, L. J., in *Standing* v. *Bowring*, 31 Ch. D. 282).

"It was obviously the intent and meaning of the transactions in this case (as it may be taken to be universally in like gifts) that the donor should receive the income during her life, and the accident that a dividend was in arrear at her death could not make any difference as to the equitable right" (*per* James, L.J., in *Fowkes* v. *Pascoe*, 10 Ch. App. 351).

"The doctrine of equity as regards presumption of gifts is this: that where one person stands in such a relation to another that there is an obligation on that person to make a provision for the other, and we find either a purchase or **investment** in the name of the other, or in **the joint names** of the person and the other of an amount which would constitute a provision for the other, the presumption arises of an intention on the part of the person to discharge the obligation to the other, and, therefore, in the absence of evidence to the contrary, that purchase or investment is held to be in itself evidence of a gift; in

(*a*) *Re Eykin*, 6 Ch. D. 115; *Drew* v. *Martin*, 2 H. & M. 130.
(*b*) *Soar* v. *Foster*, 4 K. & J. 152; *Beckford* v. *Beckford*, Lofft. 490.
(*c*) *Beckford* v. *Beckford*, *supra*; *Currant* v. *Jago*, 1 Coll. 261; *Tucker* v. *Barron*, 2 H. & M. 515; *Forrest* v. *Forrest*, 13 W. R. 380.

JOINT INVESTMENT—*continued.*

other words, the presumption of gift arises from the moral obligation to give" (*per* Jessel, M.R., in *Bennett* v. *Bennett*, 10 Ch. D. 474).

"When there is once evidence to rebut the presumption, the Court is put in the same position as a jury would be, and then we cannot give such influence to the presumption in point of law as to disregard the circumstance of the investment, and to say that neither the circumstances nor the evidence are sufficient to rebut the presumption. The presumption must, beyond all question, be of very different weight in different cases. In some cases it would be very strong indeed. If, for instance, a man invested a sum of stock in the name of himself and his solicitor, the inference would be very strong indeed that it was intended solely for the purpose of a trust, and the Court would require very strong evidence on the part of the solicitor to prove that it was intended as a gift; and certainly his own evidence would not be sufficient. On the other hand, a man may make an investment of stock in the name of himself and some person, although not a child or wife, yet in such a position to him, to her, as to make it extremely probable that that investment was intended as a gift" (per Mellish, L.J., in *Fowkes* v. *Pascoe*, *supra*).

"The mere circumstance that the name of a child or a wife is inserted on the occasion of a purchase of stock is not sufficient to rebut a resulting trust in favour of the purchaser, if the surrounding circumstances lead to the conclusion that a trust was intended. Although a purchase in the name of a wife or child, if altogether unexplained, will be deemed a gift, yet you may take surrounding circumstances into consideration, so as to say that it is a trust, not a gift. So, in the case of a stranger, you may take surrounding circumstances into consideration, so as to say that a purchase in his name is a gift, not a trust" (per Jessel, M.R., in *Marshall* v. *Crutwell*, 20 Eq. 328, 329).

Where a married woman made a purchase in the name of her children out of her separate estate, it was held that no presumption of advancement arose because she was under no obligation to maintain her children (*Re De Visme*, 2 De G. J. & S. 17; see also, *Bennett* v. *Bennett*, 10 Ch. D. 474; *Sayre* v. *Hughes*, 5 Eq. 376). But s. 21 of the Married Women's Property Act, 1882, now provides that "a married woman having separate property shall be subject to all such liability for the maintenance of her children and grandchildren as the husband is now by law subject to for the maintenance of her children and grandchildren."

Where there is an investment in the joint names of the deceased and some other person or persons, and a trust is thereby created, expressly or by implication, in favour of the deceased for life, such property is regarded as "property" settled otherwise than by the will of the "deceased" (Finance Act, 1894, s. 16 (1) (3)).

Examples.

1. A.'s free estate is £800 (net).
   A fund (£1200) is invested in the joint names of A. and B., so that the fund stands on trust for A. and B. by way of succession.

JOINT INVESTMENT—*continued.*

The £800 forms an "estate by itself." Rate 2 per cent., and the £800 and £1200 are not to be aggregated.

If A. and B. are collaterally related, then the fund (£1200), or so much thereof as is liable to Estate Duty, is also an estate by itself, or, in fact, several such estates, where there are several beneficiaries; but if B. belongs to the "family" of A., that is, is spouse, or lineal ancestor, or descendant of A., then the fund is an aggregable fund, and is to be aggregated with any other aggregable fund passing on A.'s death.

2. Similarly, where the free estate of A. does not exceed £500 (gross), or £300 (gross), the fixed duty of 50*s.* or 30*s.* would be payable, and would not be affected by the fact of the existence of the fund of £1200 passing on the same death.

Where A. and B. contributed the purchase money for the joint investment, and A. dies, leaving B. survivor, the proportion of the fund liable to duty will be the whole fund, less the proportion contributed by the survivor, B. (**Attorney-General** *v.* **Ellis** (1895), 2 Q. B. 466)).

JOINT PREDECESSOR.

Where a successor shall derive his succession from more predecessors than one, and the proportional interest derived from each of them shall not be distinguishable, the successor, in the absence of any agreement between the commissioners and the successor, shall be deemed to have derived his succession in equal proportions from each predecessor and shall be chargeable with duty accordingly (s. 13 of 16 & 17 Vict. c. 51).

Where the tenant-for-life and tenant-in-tail (under a strict settlement) disentail and convey to such uses as they shall jointly appoint, and in pursuance of such power they jointly appoint, they (the tenant-for-life and tenant-in-tail) are not joint predecessors, but the tenant-in-tail is his own predecessor, for the tenant-for-life can give nothing beyond his estate for life (*Attorney-General* v. *Sibthorp*, 3 Hurlst. & Norm. 424). See "Predecessor."

JOINTURE RENT CHARGE.

(*a*) **Legacy and Succession Duty.**

Liability to duty when the power to charge is conferred (*a*) by will **Legacy Duty** by the 8 & 9 Vict. c. 76, s. 4; **Succession Duty** by the 51 Vict. c. 8, s. 21; (*b*) by deed (**Succession Duty** by the 16 & 17 Vict. c. 51, s. 32). See "Charges on Real Estate."

When the power to charge is conferred by deed, the Duty (Succession) is payable by EIGHT equal half-yearly instalments, as in the case of a succession to real property (see, however, optional method provided by 51 Vict. c. 8); but when conferred by will, by FOUR equal yearly instalments, whether Legacy or Succession Duty be payable. As to Succession Duty payable upon cesser of jointure, see "Cesser."

(*b*) **Estate Duty.**

Deceased has a special power to jointure widow (or charge portions for younger children).

I. **Where will creating power took effect before Aug. 2, 1894.**

JOINTURE RENT CHARGE—*continued.*

A. dies 1880 and limits (by will) real estate in strict settlement thus to B. for life, remainder to C. for life, remainder to the heirs of the body of C.

Case I. C. dies in 1895, B. in 1897, and C. has power to jointure his widow.

Case II. C. dies in 1895, B. in 1897, and C. has a similar power to jointure his widow. Jointress dies in 1898.

Case III. C. dies in 1895, B. in 1897, and C. has power to jointure his widow. Jointress dies in 1896.

C. in each case exercises the power to jointure by will, to take effect on his own death.

In Case I. the property passing would appear to be the value of the life interest of the jointress for which she is accountable (Finance Act, 1894, s. 8 (4)).

In Case II. on B.'s death Estate Duty is payable on the property (less the value of the jointure valued at jointress's then age).

In Case III. Estate Duty is payable in 1896 on the proportion of the property theoretically attributable to the jointure and on B.'s death (in 1897) on the remainder.

Where C. survives B., Estate Duty is payable on the property passing on B.'s death without reference to the jointure, see *infra.*

II. **Where deed or will creating power takes effect on or after Aug. 2, 1894.**

Will. (A. dies Sept. 1, 1894).

Estate Duty is payable on A.'s death on the principal value of the property passing, and this covers any duty on the jointure when raisable (whether B. or C. has power to jointure his widow).

The general rule being that where property passes on the death (after Aug. 1, 1894) of A., and a jointure rent charge is limited thereout to A.'s wife (B.) to commence on A.'s death, Estate Duty will be payable by the successor (C.) in fee on the full value of the property without any deduction for the rent charge (s. 7 1 (*a*) Finance Act, 1894). C., however, can, under the provisions of s. 14 (1), recover a rateable proportion from B. See "Apportionment."

Deed (dated Aug. 2, 1894, and A. the settlor, dies Sept. 1, 1894).

(*a*) Case where B. (dies in 1897) has power to jointure, or where only C. (dies in 1898) has power to jointure, the Estate Duty is payable on the principal value on B.'s death, and a rateable proportion recoverable from jointress when jointure raisable.

(*b*) Case where C. dies in 1895 (and exercises power to jointure by his will), and B. in 1897.

Estate Duty payable in 1895 on the value of the life interest of the jointress. See I. (Case I.), *supra.*

The above remarks apply where portions for younger children are also charged.

See also "Benefit."

JOINT TENANCY.

Equity does not favour joint tenancies, and will readily, whenever it can do so, lay hold of circumstances to prevent the incident of survivorship.

For Example—

1. A. and B. advance and pay the purchase money of an estate. If advanced in unequal shares equity will infer that a tenancy in common was intended.
2. Similarly, where A. and B. have advanced money on loan, whether in equal or in unequal shares; and this, although the mortgage deed should contain an express clause to the effect that the money belongs to A. and B. on a joint account (*In re Jackson, Smith* v. *Sibthorpe*, 34 Ch. Div. 732).
3. Similarly, where A. and B. have made joint purchases in the way of trade; for example, partnership and other commercial transactions. In regard to lands purchased with partnership funds, the question depends upon the purposes for which the property was bought. If with the view of carrying on the partnership business, or for the purpose of a speculation on account of the partnership, there will be an equitable tenancy in common, and no survivorship: if for the separate use of the partners, not in connection with the business, there will be a simple joint tenancy and survivorship, with which equity will not interfere (*Waterer* v. *Waterer*, L. R. 15 Eq. 402; and see "Partnership Act," 1890; 53 & 54 Vict. c. 39, s. 20).

(*a*) *Limitations in joint tenancy.*

1. Land is given to A. and B., no words of severance being used. A. and B. are joint tenants for life.
2. Land is given to A. and B. and their heirs. A. and B. are joint tenants of the fee, and the heir of the survivor succeeds if there has been no severance of the tenancy *inter vivos*.
3. Land is given to A. and B. and the heirs of their bodies—
   (*a*) A. and B. (if they cannot intermarry) are joint tenants for life, and on the death of the survivor their heirs will be tenants in common in tail.
   (*b*) A. and B. (if they can intermarry) have an estate in special tail, sharing the profits during their joint lives, the survivor, and then their joint heirs, taking the whole.

Limitations of joint tenancies are frequently made to the grantees and the survivor of them. In the case of a life estate the latter words are mere surplusage, and do not affect the interest given. However, in the case of fees simple, they alter the limitation from a joint estate in fee simple to a joint estate for lives, with a contingent remainder in fee simple to the survivor (Challis's "Real Property").

Co-heirs are joint tenants (*Swaine* v. *Burton*, 15 Ves. 365).

(*b*) **Succession Duty.**

Where property is vested in joint tenants BEFORE May 19, 1853, by any title or has become vested in them AFTER the said date by any title other than as a "succession," the interest accruing to either by survivorship is derived from the deceased joint tenant.†

† In practice now held to apply to—
1. Property purchased jointly by the joint tenants.
2. Property taken jointly by the joint tenants gratuitously under a gift *inter vivos*.
3. Property taken jointly under the will of a person dying before May 19, 1853.
4. Property taken jointly by the joint tenants gratuitously under a disposition on the death of a person dying before May 19, 1853.

JOINT TENANCY—*continued.*

Where, however, the property has vested in the joint tenants as a "succession," they are liable to Succession Duty in proportion to their respective interests, and derive the interest accruing to either by survivorship from the predecessor from whom the joint title was derived (s. 3 of 16 & 17 Vict. c. 51).

Examples.

1. A. and B. have made a joint investment in money or lands; on the death of A. after May 19, 1853, B. succeeds to the proportion contributed by A. as derived from A. as predecessor.
2. A. (*ob.* 1852) devises real estate to B. (*ob.* 1857) and C. as joint tenants. Here C. succeeds to the accruing moiety as derived from B.
3. D. (*ob.* 1854) devises real estate to E. (*ob.* 1860) and F. as joint tenants. Here F. succeeds to the accruing moiety as derived from D. (*a*)
4. G. conveys (before or after May 19, 1853) real estate to H. (*ob.* 1860) and J. as joint tenants. Here J. succeeds to the accruing moiety as derived from H.
5. A. dies after Aug. 1, 1894, and devises real estate to B. and C. (brothers of A.) as joint tenants in fee.

   Succession Duty is payable by B. and C. on the principal value of the entirety, both together being "**competent to dispose**" of the entirety.

   On the death of B. subsequently, without having severed the joint tenancy, C., the other brother, as survivor, takes the succession to **one moiety** in fee, and being competent to dispose of it, pays on the principal value thereof.
6. A limitation to husband and wife, or to husband and wife and a third person, will now make them joint tenants or tenants in common, according to the terms of the limitation, see "Tenancy by Entireties."

(*c*) **Legacy Duty.**

S. 16 of 36 Geo. 3, c. 52, enacts that—

Duty on legacies in joint tenancy is to be paid in proportion to the interest of the parties; and where one of them is not chargeable with duty on the gift, and the other becomes entitled by survivorship or severance to a larger interest in the property bequeathed than that on which duty has been paid, he is to be charged with the same duty, as if the property, to which he so becomes entitled, had been originally given to or for his benefit only.

Example.

A. bequeaths personalty to B. (exempt from Legacy Duty) and C. as joint tenants. Here, should C. survive B., he must pay duty on the interest accruing to him as survivor as a deferred legacy (s. 16 of 36 Geo. 3, c. 52).

(*a*) Where, however, a will creates an absolute joint tenancy in personal estate, and a joint tenancy in fee in real estate, and the joint tenants stand all in the same degree of relationship to the testator, and the Legacy Duty is paid on the whole capital value of the bequest, and Succession Duty on the whole principal value of the devise, and there is no severance of the joint tenancy, no further Legacy or Succession Duty is claimed by the death of one joint tenant, although Estate Duty is claimed because the deceased joint tenant was "competent to dispose."

JOINT TENANCY—*continued.*

D. bequeaths legacies to E. and F. as joint tenants, both being liable to Legacy Duty. Here, on the death of either, the survivor must pay Succession Duty on the accruing share as derived from the deceased joint tenant as predecessor. The practice, however, has recently been modified, and the survivor (as in Example 3) is held to derive from D. from whom the joint title was derived. (*a*) Therefore, where the survivor dies after Aug. 1, 1894, the payment of **Estate Duty** exempts the personal estate as well as the real estate from the 1 or 1½ per cent. Succession Duty.

(*d*) **Account Stamp Duty** (s. 38 of 44 Vict. c. 12, as amended by 52 Vict. c. 7, s. 11 (1)), see "Joint Investment."

(*e*) **Estate Duty.**

A. and B. are joint tenants of a fund (£1200). A. dies after Aug. 1, 1894, and his free estate is £800 (net). Estate Duty is payable on £800 + £600 (A.'s severable share of the £1200) or £1400; rate 3 per cent.; and Legacy, Succession, and Settlement Estate Duty are potentially payable.

The fund (£1200) is not held to be "settled otherwise than by the will of the deceased," where A. and B. are joint tenants or joint owners (*a*).

Severance of Joint Tenancy.

1. By partition, or division of the joint estate among the joint tenants, who henceforth hold in severalty.
2. By alienation without partition. Here the joint owners do not hold in severalty, but become tenants in common. For example, A., B., C. are joint tenants, and A. alienates to X. This alienation does not sever the joint tenancy between B. and C. (as to the non-alienated shares), while B., C., and X. hold as tenants in common as to the alienated share.

A covenant to settle (even by an infant, if not avoided when he attains 21), if the covenant relates to the share of the joint tenant, severs the joint tenancy (*In re Hewett; Hewett* v. *Hallett* (1894), 1 Ch. 362).

Where one joint tenant mortgages his interest, the joint tenancy is severed (*In re Pollard's Estate*, 3 D. J. and S. 541).

A joint tenancy may also be severed by partial disposition. For example, A. and B. are joint tenants in fee, and A. makes a lease for the life of the lessee. Or A. and B. are joint tenants for years, and A. makes a lease for years.

Before the Married Women's Property Act, marriage severed the wife's joint tenancy as regards chattels, though not as regards chattels real or choses in action whether in reversion or possession.

3. By an accession of interest: thus if A. and B. were joint tenants for life, and the inheritance is purchased by or descends upon either.

Effect of Severance.

1. A. and B. are joint tenants. They sever. No claim for **Succession Duty** arises under s. 3 (*supra*) of the Succession Duty Act, 1853.
2. Fund limited to A. and B. for their joint lives, and on the death of either to the survivor absolutely. A. and B. join in selling to C. **Succession Duty** payable when the reversionary interest would, but for the sale, have become an interest in possession (s. 15).

Joint Tenancy of Trustees.

Trustees are made joint tenants because the right of survivorship is an incident

(*a*) See Footnote, p. 270.

JOINT TENANCY—*continued.*

of joint tenancy, and on the death of one trustee the whole trust property is *ipso facto* vested in the remaining trustee, without any act on the part of any one being necessary.

JOINT WILLS.

Where A. and B. make joint wills, they are revocable at any time by either of them or by the survivor (*Hobson* v. *Blackburn*, 1 Add. 274; *in bonis Stracey*, Dea. & S. 6; *in bonis Lovegrove*, 2 Sw. & T. 453; *in bonis Fletcher*, 11 L. R. Ir. 359).

A joint will may be proved on the death of the first of the two testators who dies (*Hobson* v. *Blackburn*, 1 Add. 274).

Where, however, A. and B. make a joint will to take effect after the death of both of them (the joint will being a disposition of joint property and not a disposition by each testator of his own property), the will cannot be proved till the death of the survivor (*in bonis Raine*, 1 Sw. & T. 144). In this case the words were, "after both our decease," and it was on this ground that Sir C. Cresswell distinguished the case from *Hobson* v. *Blackburn* (*supra*), and from *Stracey's Case* (*supra*).

However, in *Miskelly's Case* (L. R. 4 Eq. 62) the joint will was treated as being two several wills, although A. and B. were joint tenants of the real estate, which was the only property disposed of (*In bonis Raine* disapproved).

JURISDICTION.

The Court of Probate has exclusive jurisdiction with regard to the granting of probate of wills and of letters of administration affecting personal estate, including freeholds and copyholds equitably converted at the death of the deceased (*In the goods of Gunn*, 9 P. D. 242). And s. 1 of the Land Transfer Act enacts that "where real estate is vested in any person without a right in any other person to take by survivorship it shall on his death, notwithstanding any testamentary disposition, devolve to and become vested in his personal representatives or representative from time to time as if it were a chattel real vesting in them or him" (s. 1 (1)): and also that "probate and letters of administration may be granted in respect of real estate only, although there is no personal estate" (s. 1 (3)). The Court determines what testamentary papers are to be admitted to probate, as constituting the last will of the deceased; who is entitled to be the deceased's executor; or in the case of a whole or partial intestacy (or where a testator has appointed no executor, or the executor appointed has renounced) who is to administer to the estate.

Where the deceased has left no personal estate situate in England the Court is without jurisdiction to make a grant (but see s. 1 (3) of Land Transfer Act, 1897, *supra*). The Court has jurisdiction to declare what constitutes the separate property of a *feme coverte*, and to decide on the sufficiency of the execution of a power by will as well as on the validity of the will purporting to execute the power (*In the goods of Tharp*, 3 P. Div. 76, 82).

L.

LABUAN.

Date of Order in Council (Finance Act, 1894), May 18, 1897, Death Duty on property situate within the jurisdiction of the General Court of Labuan.

LABUAN—*continued.*

SCALE.

Estate exceeds $100 and does not exceed $1000		5 per cent.
Estate does not exceed	$10,000	$50 for the first $1000 $2½ for each $100, or part thereof, over.
Estate exceeds	$10,000	$275 for the first $10,000 $1 for each $100, or part thereof, over.

LAGOS.

Date of Order in Council (Finance Act, 1894), July 16, 1895.
No Death Duty leviable.

LAND TAX.

Land Tax redeemed, and not exonerated, under 38 Geo. 3, c. 60, s. 99, is a perpetual annuity in the nature of personal estate (*Pigott* v. *Pigott*, 4 Eq. 549); but where redeemed under 42 Geo. 3, c. 2, is real estate.

In estimating the value of a succession, a deduction may be taken of the land tax, where paid by the owner, in respect of property actually let. Where, however, the property is in hand, and the property tax assessment is carried out as the annual value, then if such assessment is the "annual value by determination of the Commissioners," as set out in column 14 of the Income Tax (Schedule A), Form No. 18, "the gross assessment," the land tax may be deducted; where, however, such assessment is the "net amount on which the duty is to be charged" (after deducting special allowance for repairs $\frac{1}{6}$th or $\frac{1}{8}$th per cent., Finance Act, 1894, s. 35), stated in column 24, no deduction can be taken, as it has already been allowed for.

Under the Finance Act, 1896 (s. 32), an owner of land who redeems the land tax charged thereon by payment of a capital sum according to the provisions of the Act, may have a charge upon the land for that sum, with interest equal to the amount of the land tax redeemed, and such charge, registered, will have priority over all other charges and incumbrances on the land.

LAND TRANSFER ACT, 1897 (60 & 61 Vict. c. 65).

PART I.

Establishment of a Real Representative.

Devolution of legal (*a*) interest in real estate on death.

1.—(1) Where real estate is vested in any person without a right in any other person to take by survivorship (*b*) it shall, on his death, notwithstanding any testamentary disposition, devolve to and become vested (*c*) in his

(*a*) Presumably equitable estates (where legal estate oustanding in trustees or mortgagees) will also devolve to deceased's executors or administrators.

Marginal notes to an Act of Parliament are not to be deemed part of the Act (*Sutton* v. *Sutton*, 32 Ch. D. 511; *Claydon* v. *Green*, L. R. 3 C. P. 511).

(*b*) See "Joint Tenancy."

(*c*) In executors at the death, in administrators at the date of the grant; *quære*, in whom does the legal estate vest in the interval between the death and the date of the grant, in the heir or in the President of the Probate Division?

See Robbin's "Devolution of Real Estate."

LAND TRANSFER ACT, 1897—*continued.*

personal representatives or representative (*a*) from time to time **as if it were a chattel real** vesting in them or him.

(2) This section shall apply to any real estate over which a person executes by will a general power of appointment (*b*), as if it were real estate vested in him.

(3) Probate and letters of administration may be granted in respect of real estate only, although there is no personal estate.

(4) The expression "real estate," in this part of this Act, shall not be deemed to include land of copyhold tenure or customary freehold in any case in which an admission or any act by the lord of the manor is necessary to perfect the title of a purchaser from the customary tenant.

(5) This section applies only in cases of death after the commencement of this Act. (*c*)

2.—(1) Subject to the powers, rights, duties, and liabilities hereinafter mentioned, the personal representatives of a deceased person shall hold the real estate as trustees for the persons by law beneficially entitled thereto, and those persons shall have the same power of requiring a transfer of real estate as persons beneficially entitled to personal estate have of requiring a transfer of such personal estate.

(2) All enactments and rules of law relating to the effect of probate or letters of administration as respects chattels real, and as respects the dealing with chattels real before probate or administration, and as respects the payment of costs of administration and other matters in relation to the administration of personal estate, and the powers, rights, duties, and liabilities of personal representatives in respect of personal estate, shall apply to real estate so far as the same are applicable, as if that real estate were a chattel real vesting in them or him, save that it shall not be lawful for some or one only of several joint personal representatives, without the authority of the Court, to sell or transfer real estate. (*d*)

(3) In the administration of the assets of a person dying after the commencement of this Act, his real estate shall be administered in the same manner, subject to the same liabilities for debts, costs, and expenses, and with the same incidents, as if it were personal estate; provided that nothing herein contained shall alter or affect the order in which real and personal assets respectively are now applicable in or towards the payment

(*a*) The personal representatives take, *quâ* personal representatives, not only the personalty (if any) as heretofore by the general law, but also the real estate by virtue of this Act.

(*b*) See "Powers of Appointment."

Realty, subject to a general power of appointment, which appointment is actually executed by will, becomes assets in the hands of the real representatives, instead of, as heretofore, in the hands of the appointee, who cannot make a good title until the assent of the real representatives.

(*c*) Jan. 1, 1898 (s. 25).

(*d*) It is thought that the effect of this sub-s. will be to make the penalties (*q.v.*) imposed by s. 37 of the 55 Geo. 3, c. 184, applicable to the real representative, and consequently that representation must be granted to the "personal representative"—upon whom the real estate devolves under s. 1 (1)—before Estate Duty payable in respect of such real estate can be accepted. The amount of the "gross estate" for the certificate of the Registrar of Probate is taken to be the aggregate of the total of Part I. and Part II. of Account No. 1, Form A—3. The penalty on Administration bonds is double the gross probate in Part I. added to double the gross annual (not principal) value of the real estate shown in Part II.

LAND TRANSFER ACT, 1897—*continued.*

of funeral and testamentary expenses, debts, or legacies, or the liability of real estate to be charged with the payment of legacies.

(4) Where a person dies possessed of real estate, the Court shall, in granting letters of administration, have regard to the rights and interests of persons interested in his real estate, and his heir-at-law, if not one of the next-of-kin, shall be **equally entitled** (*a*) to the grant with the next-of-kin, and provision shall be made by **rules of Court** (*b*) for adapting the procedure and practice in the grant of letters of administration to the case of real estate. (*c*)

3.—(1) At any time after the death of the owner of any land, his personal representatives **may assent** to any devise contained in his will, or **may convey** the land to any person entitled thereto as heir, devisee, or otherwise, and may make the assent or conveyance, either subject to a charge for the payment of any money which the personal representatives are liable to pay, or without any such charge; and on such assent or conveyance, subject to a charge for all moneys (if any) which the personal representatives are liable to pay, all liabilities of the personal representatives in respect of the land shall cease, except as to any acts done or contracts entered into by them before such assent or conveyance.

(2) At any time after the expiration of one year from the death of the owner of any land, if his personal representatives have failed on the request of the person entitled to the land to convey the land to that person, the Court may, if it thinks fit, on the application of that person, and after notice to the personal representatives, order that the conveyance be made, or, in the case of registered land, that the person so entitled be registered as proprietor of the land, either solely or jointly with the personal representatives.

(3) Where the personal representatives of a deceased person are registered as proprietors of land on his death, a fee shall not be chargeable on any

(*a*) The Court is opposed to joint administration except under special circumstances. See "Administrator."

(*b*) Rule made for guidance of registrars in principal and district probate registries (Nov. 20, 1897).

"All rules, orders, and instructions, and the existing practice of the Court with respect to non-contentious business, shall, as far as the circumstances of each case will allow, be applicable to grants of probate and administration made under the authority of the Land Transfer Act, 1897."

(*c*) The words of s. 2 (4) give the power to grant letters of administration to the heir-at-law of a married woman in preference to the husband.

Where the real estate of the deceased is of much larger value than the personalty, the Court will be inclined to prefer the heir-at-law in granting letters of administration (*In the estate of Mary Ardern*, 78 L. T. Rep. 536).

S. 2 (4) has not the effect of extending the powers of the Court under s. 73 of 20 & 21 Vict. c. 77 (Court of Probate Act, 1857) to realty.

Where a wife dies after Jan. 1, 1898, intestate as to real estate, but having made a will bequeathing her personalty to her husband and appointing him executor, and the husband survived her but died intestate without having proved the will, a grant of letters of administration cannot be made to the husband's administrator without citing the heir-at-law. Under certain circumstances, a grant *ad colligenda bona* may, in such a case, be made and framed so as to apply to the realty (*In the goods of Mary A. Roberts*, 78 L. T. Rep, 390).

Where a person died intestate after Jan. 1, 1898, possessed of real estate, but not possessed of personalty, letters of administration may be granted to the heir-at-law without citing the next-of-kin (*In the matter of Abraham Bennett*, 78 L. T. Rep. 391).

LAND TRANSFER ACT, 1897—*continued.*

transfer of the land by them unless the transfer is for valuable consideration.

(4) The production of an assent in the prescribed form by the personal representatives of a deceased proprietor of registered land shall authorize the registrar to register the person named in the assent as proprietor of the land.

4.—(1) The personal representatives of a deceased person may, in the absence of any express provision to the contrary contained in the will of such deceased person, with the consent of the person entitled to any legacy given by the deceased person or to a share in his residuary estate, or, if the person entitled is a lunatic or an infant, with the consent of his committee, trustee, or guardian, appropriate any part of the residuary estate of the deceased in or towards satisfaction of that legacy or share, and may for that purpose value in accordance with the prescribed provisions the whole or any part of the property of the deceased person in such manner as they think fit. Provided that before any such appropriation is effectual, notice of such intended appropriation shall be given to all persons interested in the residuary estate, any of whom may thereupon within the prescribed time apply to the Court, and such valuation and appropriation shall be conclusive save as otherwise directed by the Court.

(2) Where any property is so appropriated a conveyance thereof by the personal representatives to the person to whom it is appropriated shall not, by reason only that the property so conveyed is accepted by the person to whom it is conveyed in or towards the satisfaction of a legacy or a share in residuary estate, be liable to any higher Stamp Duty than that payable on a transfer of personal property for a like purpose.

(3) In the case of registered land, the production of the prescribed evidence of an appropriation under this section shall authorize the registrar to register the person to whom the property is appropriated as proprietor of the land.

5.—Nothing in this part of this Act shall affect any duty payable in respect of real estate or impose on real estate any other duty than is now payable in respect thereof. (*a*)

PART II.

13.—(1) On every application to register land with an absolute title, or to register a transmission of land, the registrar shall inquire as to **Succession Duty** and **Estate Duty**.

(2) If, on such application, it appears that there is, or is capable of arising, any such liability to **Succession Duty** or **Estate Duty** as would affect the purchaser from the person to be registered as proprietor if the land were unregistered, the registrar shall enter notice of the liability on the register in the prescribed manner.

(3) **Succession Duty** and **Estate Duty** shall not—

(*a*) unless so noted on the register; or

(*b*) unless in the case of a possessory title the liability to the duty was, at the date of the original registration of the land, subsisting or capable of arising; or

(*a*) See "Charge of Duty upon Property;" "Payment;" "Purchase."

LAND TRANSFER ACT, 1897—*continued.*

(*c*) unless in the case of a qualified title the liability to the duty was included in the exceptions made on such original registration of the land;

affect a *bonâ fide* registered purchaser for full consideration in money or money's worth, although he may have received extraneous notice of the liability in respect thereof.

Provisional Land Transfer Rules, 1897.

Rule 30.—Where, upon an examination of title made on the first registration of land, the Registrar finds that there is, or may arise, **any liability to Death Duties** of the kind mentioned in s. 13 of the Act of 1897, he shall enter notice thereof in the Register according to Form 17 in the schedule hereto.

Rule 31.—Where, on the death of a registered proprietor of land, his personal representatives are registered as such under Rule 14 of these Rules, **notice of liability to duty** shall not be entered.

Rule 32.—If the personal representatives of a deceased proprietor of land assent to a devise or appropriation, or transfer land to any person otherwise than by sale, **notice of the liability to duty** shall be entered unless there is produced either—

(*a*) Proof to the satisfaction of the Registrar that all duty payable in respect of the land by reason of the death of the proprietor has been paid or satisfied, or

(*b*) A **certificate from the Commissioners of Inland Revenue** in **Form 18** in the schedule hereto, or to that effect, or

(*c*) Proof to the satisfaction of the Registrar that the applicant is entitled to the land in such a capacity that any **liability to duty** would not affect a purchaser from him if the land were unregistered.

Rule 33.—Where a **notice of liability to duty** has been entered on the Register, it may be cancelled on production of any such evidence as is mentioned in the preceding rule.

FORM 17.

Notice of liability to Death Duty.

The land is liable to such Death Duties as may be payable or arise by reason of the death of A. B., of, etc., who died on the of , 18 , or by reason of a settlement created by deed dated, etc., or by reason of the determination of a lease dated, etc., *or as the case may be.*

FORM 18.

Certificate of non-liability to Death Duty.

This is to certify that the land (*or, if so*, shown and edged with red on the accompanying plan marked , being part of the land) comprised in the title No. , may be registered **without notice** of any **liability to Death Duty** by reason of the death of A. B., of, etc., and that any such notice already registered may be cancelled.

LAPSE.

A devise, though to B. and his heirs, or bequest, though to B., his executors or administrators or personal representatives (*a*) will, unless a contrary intention

(*a*) Where, however, the bequest is "to B. or his personal representatives;" or "to B. or his heirs," a substitution would, as a rule, be implied, and there would be no lapse (*Gittings* v. *M'Dermott*, 2 M. & K. 69); and see *Re Porter's Trusts*, 4 Kay & J. 188; *Re Whorwood*, 34 C. D. 446.

LAPSE—*continued.*

shall appear by the will, lapse or fail by the death of B. in the lifetime of the testator.

The rule applies though the bequest be of a debt due to the testator, and though the legatee be dead before the date of the will (*Elliott* v. *Davenport*, 1 P. W. 83).

A bequest to B. (who dies since the date of the will) his executors and administrators is not prevented from lapse by reason of the confirmation of a will by a codicil (*Hutcheson* v. *Hammond*, 3 B. C. C. 127).

A lapsed devise is taken by the residuary devisee; a lapsed bequest by the residuary legatee; a lapsed residuary bequest, or share of a residuary bequest, by the persons entitled under the Statute of Distributions.

The appointee must survive the donee of a power of appointment (exercised by will) in order to take (*Duke of Marlborough* v. *Lord Godolphin*, 2 Ves. Sen. 61).

The interest of those taking in default of appointment does not fail by the death of the donee of the power before the testator (*Hardwick* v. *Thurston*, 4 Russ. 380).

The doctrine of lapse also applies where testator has covenanted to appoint by will (*Re Brookman's Trust*, 5 Ch. 182).

A mere declaration that a legacy shall not lapse is not of itself sufficient to prevent lapse (*Pickering* v. *Stamford*, 3 Ves. 493; but see *Sibley* v. *Cook*, 2 Atk. 572).

Lapsed legacies charged on real estate sink into the land for the benefit of the devisee or heir, see "Vesting."

Where there is no lapse.

1. If an estate tail is devised by A. to B., who predeceases A. leaving issue inheritable under the entail, to survive A., there is no lapse, the devise taking effect as if B.'s death had happened immediately after the death of A., unless a contrary intention shall appear by the will (s. 32 of the Wills Act, 1 Vict. c. 26).

2. Where A. bequeaths personal estate or devises real estate to B. (a child or other issue), and B. predeceases A. leaving issue to survive A., the same result will follow (s. 33). A will made by B., and disposing of the property thus given him, will be operative (*Johnson* v. *Johnson*, 3 Hare, 157).

If any of B.'s issue (*e.g.* a grandchild not in existence at B.'s death) is alive at A.'s death, there will be no lapse (*Re Parker*, 15 W. R. 262).

Where, however, the bequest is to testator's issue as a class (*e.g.* to the children of A. living at his death), only the children then living will take, and the issue of a child who predeceased will take nothing (*Fulford* v. *Fulford*, 16 Beav. 565). And this applies although there be but one child (*Harvey* v. *Gillow* (1893), 1 Ch. 567).

S. 33 does not apply where A. in the exercise of a limited power to appoint a certain fund among his children appoints to B. (a child who predeceases A. leaving issue him surviving). Here the appointed gift lapses (*Holyland* v. *Lewin*, 32 W. R. 443).

Where, however, A. exercised a general power of appointment in favour of his son B., who predeceased A. leaving issue him surviving, there was no lapse (*Eccles* v. *Cheyne*, 2 K. & J. 676).

A. made a specific devise of a freehold house to his son B. B. predeceased A. leaving issue him surviving, having made a will (which contained no residuary gift) in which he gave all his property to his father A.

Held, that as under the Wills Act it had to be presumed that A. predeceased

LAPSE—*continued.*

B., B.'s gift to his father lapsed, and E., the heir-at-law of B., was entitled to the property (*In re Jones, Jones* v. *Hensler*, 19 Ch. D. 612).

A. devised real estate to his daughter B., who predeceased A. leaving issue him surviving. Held, that as under the Wills Act it must be presumed that B. died immediately after A., she (B.) was sufficiently seized of the lands to give her husband the right to an estate by the curtesy in them (*Eager* v. *Furnivall*, 17 Ch. D. 115); and see "Curtesy."

3. In the case of a devise or bequest to A. and B. as joint tenants, and one of them (A.) predeceases the testator, or is an attesting witness to the will, there is no lapse, but B. takes the whole as the surviving joint tenant. See "Joint Tenancy."
4. In the case of a devise or bequest to a class of indefinite number, for example, to "the children of A." as tenants in common, and one of the children dies in the lifetime of the testator, his share will go to the survivors. Where, however, the legatees take nominatim in equal shares, the shares of any who predecease the testator will lapse into the residue. Where the gift is to tenants in common with a clause of survivorship, see "Accruer."
5. Where a legacy has vested there is no lapse, by reason of the fact that the particular purpose for which it was bequeathed (for example, a bequest to A. to apprentice him) cannot be effected; and the personal representatives of A. would take should he die before the object of the gift is effected.

Probate or Estate Duty.—A bequest to a deceased child (or other issue) of the testator, leaving issue to survive the testator, is liable to Stamp Duty under the child's will or intestacy, as if such child (or other issue) had survived the testator (*Perry's Executors* v. *The Queen*, L. R. 4 Ex. 5).

LEASEHOLDS.

1. Leaseholds for years whether absolute or determinable on lives made liable—
   To **Legacy Duty** by 36 Geo. 3, c. 52, exempted therefrom by 16 & 17 Vict. c. 51, s. 19;
   To **Probate Duty** by 55 Geo. 3, c. 184;
   To **Succession Duty** by 16 & 17 Vict. c. 51;
   To **Account Stamp Duty** by 44 Vict. c. 12;
   To **Temporary Estate Duty** by 52 Vict. c. 7;
   To **Estate Duty**, Finance Act, 1894, s. 1.
2. Where the grant is taken out after Sept. 1, 1868, and where leaseholds are the sole security, mortgages secured thereon may be deducted from the saleable value thereof.
3. Where the grant is taken out after June 1, 1881, leaseholds on which Probate Administration or Account Duty (and where the deceased died after Aug. 1, 1894, leaseholds on which Estate Duty) has been paid are exempt from the 1 per cent. Legacy and Succession Duty, and ALL leaseholds (including leaseholds for lives) are exempt from the additional rates imposed by 52 Vict. c. 8, s. 21 ($1\frac{1}{2}$, $4\frac{1}{2}$, $6\frac{1}{2}$, $7\frac{1}{2}$, $11\frac{1}{2}$).
4. Leaseholds passing under a settlement (other than voluntary) on a death on or after July 1, 1888, are liable to the additional rates (51 Vict. c. 8, s. 21); but see "Additional Succession Duty."

From the above it will be observed that though leaseholds are liable to Succession Duty as "REAL PROPERTY" (16 & 17 Vict. c. 51), yet where they pay STAMP DUTY as PERSONALTY they are only liable to the rates (3, 5, 6 and 10 per cent.) imposed on personalty.

LEASEHOLDS—*continued.*

5. Leaseholds included in Account No. 1, annexed to the affidavit leading to the grant, where the gross estate and effects (English and Foreign) do not exceed £300, and which affidavit bears a 30s. stamp, are exempt from further duty. See also "Fixed Duties" as to exemption where estate does not exceed £500, and "Small Estates" as to exemption where estate does not exceed £1000; where the death is after Aug. 1, 1894

6. **Falling in of Leases.**

Where property has been leased by the beneficial owner (A.) no Succession Duty is payable in respect of the increase of benefit accruing to him by the determination of the lease (whether for years or lives) in his lifetime. If, however, in the case of a lease for lives (say for the life of B.) A. should transfer his reversionary interest by way of immediate gift to X. a postponed succession is conferred on X. (s. 5 of 16 & 17 Vict. c. 51), and Succession Duty will be payable on the death of B., and if A. should predecease B. and devise the property leased to C. then C. will be liable to Succession Duty on A.'s death (s. 2) on the reserved rental (if any) and on the death of B. to further Succession Duty in respect of the excess of the rack rental over this reserved rental (ss. 5 and 20), or should C. either renew the lease, or grant a reversionary lease in consideration of a premium, he is chargeable with duty as a successor in respect of the premium thus obtained (s. 25).

A testator who died in 1873, devised to his nephew, B., in fee simple two freehold houses, which were then let on leases at rents less than the rack-rents of the same, and in 1877 B. had paid, in respect of these houses, the Succession Duty as calculated on the rentals reserved by the leases. In 1888 he sold both houses to the lessees of one of the houses, and in Dec. 1889 the leases of both the houses fell in, and the purchasers then became entitled in possession to the full value of the houses. The Crown claimed that Succession Duty was payable by the purchasers in Dec. 1889, in respect of the increased value accruing to them upon the **falling in of the leases,** to be calculated on the basis of an annuity during the residue of the lives of the purchasers equal to the increase of the value: *Held,* that the purchasers were not "successors," and were not liable as such to the duty, but were liable for what B., the alienor, would have been liable for, namely, a sum calculated in respect of the increase of value by the falling in of the leases on the basis of the **alienor's own life (The Attorney-General** *v.* **Mander and another,** 74 L. T. 103). *Solicitor-General* v. *Law Reversionary Interest Society* (L. R. 8 **Ex.** 233), distinguished on the ground that there the succession did not happen until the Society had become the alienee of the whole estate.

Note that where deceased dies after Aug. 1, 1894, and the successor is "competent to dispose" of the subject of his succession, Succession Duty is payable on the principal value thereof, which, in the case of realty leased for a term or for lives, will be the value of the reversion on the lease at the date of the death of the deceased (Finance Act, 1894, s. 18 (1)).

7. Where sold in excess of estimated value additional duty may be payable.

8. With reference to the provisions of s. 21 (2) of 51 Vict. c. 8 (Appendix), it is held in practice that leaseholds and proceeds of sale of leaseholds directed to be sold are not to be considered as included in the term "real or heritable estate."

9. Where a tenant-for-life is entitled to the specific enjoyment of leaseholds which are converted under compulsory powers, he will be entitled to the same income as before, and if he survives the period when the lease would have determined,

LEASEHOLDS—*continued.*

he is absolutely entitled to the purchase-money (Theobald on Wills, 4th edition).

Renewable Leases.

In many cases landlords (generally corporations) grant their tenants fresh leases either before or after the expiration of the existing leases. A covenant to renew the lease on payment of a fine is in other cases inserted, and this covenant may be so framed as to give the lessee a perpetual right to renew on the expiration of each successive lease. Where such leases are settled, the benefit of a renewal enures for the benefit of all beneficially interested in the old lease, and the costs of renewal are apportioned between the tenant-for-life and remaindermen in proportion to the periods of their actual enjoyment of the new lease respectively.

Leaseholds are not within the Statute of Uses, but are within the Statute of Frauds, the Mortmain Act, and Locke King's Acts; and are "personal estate" within Lord Kingsdown's Act (1861).

Leaseholds, enlargement of long terms into fee simple, see "Enlargement."

A will of leaseholds, is governed by *lex loci*, see "Immoveables."

Effect of a general devise upon leaseholds, see "General Devise."

Gift of English leaseholds, by Foreign will, see "Immoveables."

Leaseholds of wife, see "Married Women's Property."

Leaseholds, having not less than 200 years unexpired, or not subject to any rent greater than a shilling a year, are authorized investments (Trustee Act, 1893, s. 5).

Leaseholds are "real security" only when they are held for a long term of years at a peppercorn rent, and are not subject to onerous covenants.

Leaseholds, when subjected by will to a series of limitations directly or by way of trust, without any particular directions as to investment or mode of enjoyment, must, in the absence of a contrary intention, be converted and put in such a state of investment as to be securely available for all persons interested therein (*Howe* v. *Lord Dartmouth*, 7 Ves. 137).

Leaseholds vest in the executor or administrator *virtute officii*;

One of several executors can assign his testator's leaseholds, as his authority is joint and several.

It appears to be doubtful, however, whether one of several administrators can do so (see *Hudson* v. *Hudson*, 1 Atk. 460, where it was held that administrators had a joint authority only; and *Jacomb* v. *Harewood*, 2 Ves. Sen. 265, where the contrary was held, and it was decided that an assignment by one of several administrators was good).

Estate Duty.

The Estate Duty on leaseholds specifically bequeathed is payable out of the testator's general personal estate, and no part of it is to be borne by the specific legatee (Finance Act, 1894, ss. 9, 14. **In re Culverhouse, Cook** *v.* **Culverhouse** (1896), 2 Ch. 251; 74 L. T. 347).

In this case Kekewich, J., said he was not prepared, in the absence of distinct authority, to depart from elementary rules, such as those laid down in Williams on Executors, *e.g.* where the learned author says, that, "even where a term for years is specifically devised, it will, in the first instance, vest in the executor, by virtue of his office, for the usual purposes to which the testator's assets shall be applied, and the legatee shall have no right to enter without the executor's special assent" (Williams' "Executors," 9th ed. p. 600).

LEASEHOLDS—*continued.*

Where deceased died seized of realty leased for a term or for lives, Estate Duty is payable on the principal value, that is, the value of the reversion on the lease (Finance Act, 1894, s. 1).

Estate Duty, however, is not payable in respect of the falling into possession of the reversion of any lease for lives, where granted for full consideration in money or money's worth paid to the grantor for his own use and benefit, or for the use or benefit of any person for whom the grantor was a trustee. Where, however, only partial consideration was given, the value of such consideration is to be allowed (s. 3).

LEEWARD ISLANDS.

Date of Order in Council (Finance Act, 1894), July 16, 1895.

Death Duties imposed—

(*a*) By "The Stamp Act, 1887" (Federal Act, No. 32 of 1887).

SCALE.

Not above £25	Nil.
„ £50	10*s.*
For every additional £100, or fraction	20*s.*

(*b*) "An Act to make certain provisions as regards Estate Duty in certain cases in respect of property situate in the Colony" (Federal Act, No. 18 of 1894). The amount leviable, which is restricted to property in the Colony chargeable with British Estate Duty, is regulated by and is identical with what turns out to be the British Estate Duty.

LEGACY AND LEGACY DUTY.

I. To constitute a "legacy," for the purposes of the Legacy Duty, there must be a "gift" by some "will or testamentary instrument," out of property situate in this country, within the definition of the Legacy Duty Acts.

To constitute a legacy out of real estate within the terms of s. 4 of 45 Geo. 3, c. 28, the gift must be out of real estate devised to another person (*Shirley* v. *Earl of Ferrers*, 1 Ph. 167), and the real estate must be situate in this country.

Legacy Duty depends as to its incidence upon the domicile of the deceased, and as to its amount upon the value of the bequest, and the relationship borne by the beneficiary to the deceased.

II. **Definition of a "Legacy" in the Legacy Duty Acts.**

Property liable to Legacy Duty.

A "legacy" must be a "gift," which must be by some "will or testamentary instrument," and the property out of which it is given must be situate in this country, and "where a man is domiciled there the personal property is to be considered as situate" (per Baron Alderson, 6 Ex. 222). The subject-matter of the gift must fall within the terms laid down by s. 7 of 36 Geo. 3, c. 52; or s. 4 of 45 Geo. 3, c. 28; or s. 4 of 8 & 9 Vict. c. 76. **S. 7 of 36 Geo. 3, c. 52,** defines a legacy to be "any gift . . . which shall . . . have effect, or be satisfied out of the personal estate" of the testator, or out of any *personal estate* (*a*) which he "shall have power to dispose of as he shall think fit,"

LEGACY AND LEGACY DUTY—*continued.*

"whether the same shall be given by way of annuity or in any other form, and whether the same shall be charged only on such personal estate, or charged also on real estate of the testator or testatrix who shall give the same; except so far as the same shall be paid or satisfied out of such real estate, in a due execution of the will or testamentary instrument by which the same shall be given; and every gift which shall have effect as a donation **mortis causâ** shall also be deemed a legacy within the intent and meaning of this Act."

S. 4 of 45 Geo. 3, c. 28, extends the definition to include gifts charged upon or made payable out of any real estate of the deceased, or which he "may have power to dispose of," or out of any moneys to arise by the sale of such real estate. The section, however, contained a proviso to the effect that specific sums of money charged upon real estate by any "marriage settlement or deed," and appointed or apportioned by will under any power for the purpose (which proviso was held in *Attorney-General* v. *Marquis of Hertford* (14 Mee. & W. 284) to embrace and include an annuity) were to be excepted from its operation.

It was decided in *Re Cholmondeley* (1 Cr. & Mee. 149) that the term "legacy" must have the same meaning in **55 Geo. 3, c. 184,** as had been given to it in previous Acts, viz. 36 Geo. 3, c. 52, and 45 Geo. 3, c. 28.

S. 4 of 8 & 9 Vict. c. 76, passed in consequence of the decision in *Attorney-General* v. *Marquis of Hertford* (14 Mee. & W. 284), (*supra*) extends the definition to include—

Every gift by any will or testamentary instrument which by virtue of such will or instrument is payable out of *personal or moveable estate* (*a*) or effects of which the testator had power to dispose; or is charged upon real or heritable estate, or the rents of profits thereof, which he had any right to charge with the payment of money; or is payable out of moneys to arise from the sale, mortgage, or other disposition of any such real or heritable estate; whether such gift be by way of annuity, or in any other form; and also every donation *mortis causâ.*

The section, however, contains a proviso practically repealed by the Succession Duty Act (16 & 17 Vict. c. 51):

That no money which by any marriage settlement is subjected to a limited power of appointment for the benefit of any person therein specially named or described as the object of the power, or for the

(*a*) What constitutes "**personal estate**" within ss. 7 & 20 of 36 Geo. 3, c. 52, and s. 4 of 8 & 9 Vict. c. 76:—

i. Estates *pur autre vie* (applicable by law as personal estate).
The liability of estates *pur autre vie* under s. 20 of 36 Geo. 3, c. 52, is not affected by the fact that deceased owner died domiciled abroad (*Chatfield* v. *Berchtoldt*, L. R. 7 Ch. App. 192).

ii. Partnership real estate.
Being impressed in equity with the character of personal estate, it is liable as such to Legacy Duty (*Forbes* v. *Steven*, Law Rep. 10 Eq. 178; see also 53 and 54 Vict. c. 39, s. 22, Partnership Act, 1890).

iii. Scotch patents, granted to the patentee, his executors and administrators, have been held to be personal estate (*Advocate-General* v. *Oswald*, 10 Sco. Sess. Ca. 2nd Ser. 969). It has, however, been decided that profits arising from lighthouse tolls are real estate and not personal (*Attorney-General* v. *Jones*, 1 McN. & Gor. 574).

LEGACY AND LEGACY DUTY—*continued.*

benefit of the issue of any such person, shall be liable to duty under the will containing the appointment in exercise of such limited power.

S. 21 (2) of 51 Vict. c. 8 enacts that the duties chargeable under the Legacy Duty Acts shall not be levied and paid under such Acts in respect of

"Any legacy payable or having effect or being satisfied out of or charged or rendered a burden upon the real or heritable estate of any person dying on or after July 1, 1888, or any real or heritable estate, or the rents or profits thereof, which such person shall have had any right or power to charge, burden, or affect with the payment of money, or out of or upon any moneys to arise from the sale, mortgage, or other disposition of any such real or heritable estate, or any part thereof";

but the duties under the Succession Duty Act, 1853, and the additional duties under this Act shall be levied and paid in respect of every such legacy (whether given by way of annuity or in any other form) as a **succession to personalty.**

It was decided in *Cullen* v. *Attorney-General for Ireland* (L. R. 1 Eng. & Ir. H. L. App. 190) that the will alone determines what shall be a "legacy," and a secret trust outside the will does not change the legatee named in the will.

However, where the bequest is to a person (to be nominated by the executor or by any one else selected by the testator) who falls within a particular description, such bequest is a legacy, although the beneficiary is unnamed in the will (*Thomas* v. *Howell*, L. R. 18 Eq. 198).

The Legacy Duty is imposed not only upon "every legacy, specific or pecuniary, or of any other description," but also "upon the clear residue and upon every part of the clear residue of the personal estate" of every person dying, whether testate or INTESTATE (s. 2 of 36 Geo. 3, c. 52).

As to exemptions from Legacy Duty, see "Exemptions."

III. **What have been deemed "Legacies."**

(*a*) Debt, release of, direction to pay, etc., by testator—

A release of a debt due to the testator is a legacy chargeable with duty (*Attorney-General* v. *Holbrook*, 3 Yo. & Jer. 114): where, however, a testator directs a debt due from him to be paid then (i.) if the debt is not legally extinguished the direction to pay is not a legacy subject to duty, notwithstanding that the debt is barred by the Statute of Limitations (*Williamson* v. *Naylor*, 3 Y. & Coll. 208); but (ii.) if legally extinguished then the creditor pays duty as a legatee (*Turner* v. *Martin*, 26 L. J. R. (Ch.) 216); a direction to pay interest on a statute barred debt is a legacy to the extent of the interest actually paid (*Cooke* v. *Turner*, V.-C. Shadwell, 1850, 15 M. S. (cited in Hanson, 4th ed. p. 410) & 15 Sim. 611); where a testatrix directs her executors to pay the debts of another person (her first husband) for which she (the testatrix) is not personally liable, the creditors pay duty as legatees (*Foster* v. *Ley*, 2 Bing. N. C. 269).

(*b*) A RENT-CHARGE created by will has been deemed a legacy within s. 4 of 45 Geo. 3, c. 28 (*Attorney-General* v. *Jackson*, 2 Cr. & Jer. 101; *Stow* v. *Davenport*, 5 B. & Ad. 359); but income, arising from real

LEGACY AND LEGACY DUTY—*continued.*

estate, directed to be applied for the maintenance of a minor (the real estate being devised to him on his marriage, or the attainment of his majority) was held in *Shirley* v. *Ferrers* (1 Phil. 167) not to be a legacy within said Act. "Nothing but what is a charge upon the estate of another person will come within the statute" (per Lord Lyndhurst, C.). Succession Duty (16 & 17 Vict. c. 51, s. 32) would, however, now be payable.

(*c*) Gifts to EXECUTORS for their personal trouble, being acts of bounty, are legacies (*Duncan* v. *Watts*, 16 Beav. 204).

As to the liability, *quâ* legatee, of a trustee (authorized by the testator to make professional charges for work done), to the extent of his profit-costs (see *In re Pooley*, 40 Ch. D. 1; 37 W. R. 17; *Thorley* v. *Massam*, 39 W. R. 233).

(*d*) A gift for maintenance creates a legacy (*In re Harris*, 7 Ex. 344, etc.); see "Maintenance."

(*e*) A "legacy" with a condition annexed to the receipt of it is liable to Legacy Duty (*Henniker* v. *Attorney-General*, 8 Ex. 257; cf. *Sweeting* v. *Sweeting*, 1 Drew. 331).

(*f*) In the case of a covenant to bequeath a share of residue (though not of a covenant to bequeath a fixed sum, which indeed creates a debt), the bequest thereof constitutes a legacy (*Jervis* v. *Wolferstan*, 18 Eq. L. R. 18).

(*g*) Although no legacy duty is payable in respect of any personal estate given up by one legatee to another under the doctrine of election (for to be liable to duty the personal property must belong to the testator, or be subject to his disposal), yet if a testator devised certain real estate to A., and bequeathed part of A.'s personal estate to B., such gift to B., if satisfied by A. under the doctrine of election, is liable to Legacy Duty as a legacy charged on the testator's real estate (*Laurie* v. *Clutton*, 15 Beav. 131; Hanson, 4th ed. p. 425). As to the practice which now obtains, see "Election."

As to **effect of domicile** of deceased upon liability to Legacy Duty, see "Domicile."

As to **payment of Legacy Duty** (when, by whom, and upon what amount), see "Payment."

As to **deductions** against Legacy Duty, see "Deductions."

See also "Cumulative Duties;" "Powers of Appointment;" "Disclaimer;" "Conversion;" "Different Persons in Succession, Gifts to."

Legacies charged on real estate, or the proceeds of sale thereout, though taxable with Succession Duty, where the person charging dies on or after July 1, 1888 (51 Vict. c. 8, s. 21), yet remain "legacies," and all the laws incidental to legacies apply to them.

Legacies so charged might, however, be liable to Temporary Estate Duty (52 Vict. c. 7, s. 6).

Examples.

Absolute Bequests.

1. PECUNIARY LEGACY.—£19 19*s.* to A. (brother, or other collateral relation of the deceased).

Pecuniary legacies "under £20" were made subject to Legacy Duty by s. 42 of 44 Vict. c. 12.

LEGACY AND LEGACY DUTY—*continued.*

2. BEQUEST TO A CHILD.—£80 to B. (son of deceased).

Where the deceased's estate and effects have paid Stamp Duty in conformity with the provisions of 44 Vict. c. 12, or Estate Duty (Finance Act, 1894, s. 1), the duty at the RATE of ONE per cent. is not payable.

This exemption does not extend to legacies out of FOREIGN personalty, nor to legacies charged on real estate, when Stamp Duty is not payable thereon, where testator died before Aug. 2, 1894.

It should be noted that if the son (B.) should die in the testator's lifetime leaving issue the gift does not lapse (s. 33 of the Wills Act, 1 Vict. c. 26) and is liable to Probate (*Perry's Executors* v. *The Queen,* L. R. 4 Ex. 27) or Estate Duty, and Legacy Duty as an asset of his (B.'s) estate.

3. BEQUESTS OF SPECIFIC ARTICLES "UNDER £20."—

(*a*) plate, value £18, to C.

(*b*) plate (£10) and £9, to D.

(*c*) plate (£14) and £6 to E.

Bequests of SPECIFIC ARTICLES, where the legatee takes legacies or shares of residue in the aggregate under £20 in amount or value, are exempt from Legacy Duty (55 Geo. 3, c. 184, Sch., Part III.), s. 42 of 44 Vict. c. 12 only applying to pecuniary legacies and shares of residue.

Therefore, in (*a*) and (*b*) the plate is exempt from duty.

4. SPECIFIC LEGACY.—

(*a*) "my" £500 G. N. R. debenture stock to G.

(*b*) release to H. of a debt of £85 due from him to the deceased.

Specific legacies are liable to ADEMPTION, but where abatement is necessary they have priority over general legacies and even over demonstrative legacies (where the primary fund has ceased to exist).

Specific legacies, moreover, carry interest from the death, though the enjoyment of the legacy may be postponed by the testator; also bonuses and dividends declared after the death.

5. DEMONSTRATIVE LEGACY.—"My" £1073 G. W. R. 5 per cent. debenture stock thus:—

to pay thereout £750 to K. (demonstrative legacy) and subject thereto to L.

Demonstrative legacies have priority over general legacies where abatement is necessary and the particular fund exists; but if the fund has been called in, or has ceased to exist, there is no ademption, but the legacy (for example, the £750 to K.) will be paid out of the general assets.

It would seem that a demonstrative legacy carries interest a year from the death (*a*) like a general legacy, and not from the death like a specific legacy (*Mullins* v. *Smith,* 1 Dr. & S. 204; *Sleech* v. *Thorington,* 2 Ves. Sen. 560).

6. RELEASE OF DEBT.

(*a*) Release of debt of £100 owing to testator by K. This is a legacy to K. (*Attorney-General* v. *Holbrook,* 3 Yo. & Jer. 114).

(*b*) Testator directs his executors to pay a debt of £500 due from

(*a*) As to cases where interest runs from the death, see "Interest."

LEGACY AND LEGACY DUTY—*continued.*

L. to M. This, if L. is dead, is a legacy to M. if testator is under no legal obligation to discharge the debt (*Foster* v. *Ley*, 2 Bing. N. C. 269); but if L. is alive, he is the legatee.

(*c*) Testator directs his executors to pay debts of £100, £150, and £200 due from him to N., O., and P. respectively.

If these debts are subsisting debts (even though statute-barred) this direction does not constitute N., O., and P. legatees; but if statute-barred debts and directed to be paid with interest, the amount actually paid for interest will be a legacy, and as such liable to duty. And where such debts have been absolutely released or extinguished, N., O., and P. will be legatees.

7. BEQUEST TO EXECUTORS.—£100 each to executors for their trouble. This gift is a LEGACY to the executors, being an act of bounty on testator's part, inasmuch as an executor, by taking upon himself the office, cannot charge for personal trouble in performing the duties incident thereto (*Duncan* v. *Watts*, 168 Beav. 204). Where, however, the gift is for the performance of acts, for which otherwise he might employ an agent to do, it does not amount to a legacy (*Wilkinson* v. *Wilkinson*, 2 S. & St. 237: but see *In re Pooley*, 40 Ch. D. 1; 37 W. R. 17; *Thorley* v. *Massam*, 39 W. R. 233).

8. BEQUEST FREE OF DUTY.—£500 free of duty to Q. (brother). The duty (£15) can be deducted from the residue, and (although a gift to Q.) is exempt from duty (s. 21 of 36 Geo. 3, c. 52). RESIDUE cannot be given free of duty (*Lord Londesborough* v. *Somervill*, 19 Beav. 295). In the event of a deficiency of assets the gift of the duty must abate with the general legacies (*Farrer* v. *St. Catherine's College*, L. R. 16 Eq. 19). See "Free of Duty."

9. BEQUESTS TO CHARITIES.—£500 to Charing Cross Hospital. This gift is liable to duty at the rate of 10 per cent. (*Re Parker*, 4 Hurlst. & Norm. 666).

10. BEQUESTS TO MINORS.—

(*a*) £500 to F. at twenty-one (with a DIRECTION to apply the whole or any part of the interest meantime). The legacy is VESTED (not so where there is only a power to apply the interest meantime, *Re Wintle*, 45 W.R. 91) and duty is chargeable on the £500 as an absolute legacy to F.

(*b*) £600 to G. if and when he attains twenty-one (with POWER to apply the whole or any part of the interest meantime).

This legacy is a CONTINGENT legacy; but if the residuary legatee is liable to the SAME RATE of duty, duty is payable on the £600 as an absolute legacy; if liable to a DIFFERENT RATE of duty, then, if to a HIGHER rate than G., duty is payable absolutely, subject to a readjustment should the legacy not vest; but if the residuary legatee is liable to a LOWER rate or is liable to duty by way of annuity, duty is payable on the interest applied from time to time.

(*c*) £700 to H. payable at twenty-one.

The payment of the legacy which is vested (*a*) is deferred till

(*a*) See "Vesting."

LEGACY AND LEGACY DUTY—*continued.*

H. attains twenty-one, when duty is payable, unless the residuary legatee is liable to the same rate of duty, when duty is payable on the legacy as if an immediate gift. Should H. die under twenty-one his representatives will be entitled.

(*d*) £800 to J. at twenty-one or marriage. This legacy is CONTINGENT, and no duty is payable on the *corpus* till J. attains twenty-one or marries.

In (*c*) and (*d*) the interim interest accrues to the residuary legatee, and if liable to a different rate of duty, duty will be payable by the residuary legatee on the value of the interim benefit accruing to him (see Form No. 3, p. 3).

11. (*a*) BEQUEST OF LEGACY SUBJECT TO AN ANNUITY.—For example, £1000 to K. subject to the payment thereout of an annuity of £25 a year to L.

K. is entitled to the immediate payment of the £1000, he, and not the executor (s. 9 of 36 Geo. 3, c. 52), being liable to pay the duty on the annuity.

The duty payable in respect of the legacy is calculated on the value thereof after deducting the value of the annuity (s. 9). Duty is not payable on the *corpus* of the £1000 as an absolute legacy, although K. and L. be liable to the same rate of duty, the provisions of s. 12 not being applicable (*Crow* v. *Robinson*, 10 W. R. 306). S. 9 does not however apply to the case of a gift of an annuity to M. and the residue to N., the executor and not N. being liable for the duty in this case; otherwise where the gift is of the residue subject to the annuity.

(*b*) BEQUEST OF SUM TO PURCHASE AN ANNUITY.—£6000 to purchase therewith an annuity for O. Such a bequest carries interest from a date twelve months after the death of the testator (*Re Friend*, 78 L. T. 222), or such a SUM as will purchase an annuity of £150 for the life of P.

Duty is payable on the £6000 as a legacy to O.; similarly on the sum necessary to purchase the annuity of £150 as a legacy to P.

Where a specified sum is directed by testator to be laid out in purchasing a government annuity for the life of Q., duty is payable on the sum so bequeathed, and such direction vests the sum in Q., whether the annuity is in possession or reversion, and if Q. dies before the time when the annuity was to be purchased he is entitled to the purchase-money (*Dawson* v. *Hearn*, 1 R. & M. 606; *Ford* v. *Batley*, 17 B. 303), and this notwithstanding a provision that the annuity is to cease upon alienation (*Hunt Foulston* v. *Furber*, 3 Ch. D. 285).

12. BEQUEST IN JOINT TENANCY.—£600 to K. and L. as joint tenants. Duty is payable by K. and L. each on a moiety of £600, and, on the death of either without severance, Succession Duty will be payable by the survivor in respect of the accruing moiety, or Legacy Duty where the deceased joint tenant was not chargeable with duty (36 Geo. 3, c. 52, s. 16; 16 & 17 Vict. c. 51, s. 3). Where both liable to the same rate, see 21 (*c*).

13. GIFT OF NEXT PRESENTATION TO A LIVING.—AN ADVOWSON is the perpetual right of presentation to a benefice, and descends to the

LEGACY AND LEGACY DUTY—*continued.*

heir; but the next presentation is merely the right to present upon the vacancy which occurs after the grant, and is PERSONAL ESTATE, and the gift thereof is liable to duty as a legacy out of real estate; but where the testator has died on or after July 1, 1888, the same will be liable (but not unless and until sold) as a succession to personalty (51 Vict. c. 8, s. 21; 16 & 17 Vict. c. 51, s. 24).

14. BEQUEST OF A LIFE POLICY.—Where the policy is effected on the life of a person other than the testator, a certificate as to the surrender value of such a policy should be annexed to the receipt when duty is tendered.

15. BEQUEST OF (*a*) GOODWILL OF BUSINESS; (*b*) SHARE IN PARTNERSHIP ASSETS.

(*a*) Duty should be offered on the price at which taken over, or on the price at which valued (whether valued according to the custom of the particular trade or not); but see provisions of s. 22 of 36 Geo. 3, c. 52, and *Attorney-General* v. *Dardier*, L. R. 11 Q. B. D. 16.

(*b*) The balance-sheet signed by the surviving partners and annexed to the affidavit leading to the grant is the accepted test of value.

As to the liability of partnership real estate as personalty to Legacy Duty, see *Forbes* v. *Steven*, L. R. 10 Eq. 178.

16. BEQUEST OF (1) PLATE, FURNITURE, ETC., TO N. FOR LIFE (*a*).—Not liable to duty while enjoyed in kind; but liable when actually sold (even though improperly sold by the tenant-for-life), or coming into the possession of any "person or persons having power to sell or dispose thereof" (s. 14 of 36 Geo. 3, c. 52). Where included in a gift of RESIDUE, and testator shows no intention that the tenant-for-life is to enjoy the plate, etc., in kind, it is presumed the executors must sell and invest the proceeds with a view to the interest of the remainderman. See *Howe* v. *Earl of Dartmouth*, 7 Ves. 130, and "Conversion of Wasting Securities."

BEQUEST OF (2) CHATTELS TO GO AS HEIRLOOMS.—A bequest of chattels to O. and his heirs to go as heirlooms vests absolutely in O., whether such words as, "so far as the rules of law and equity will permit," or "to be enjoyed and go with the title" are added or not (*Rowland* v. *Morgan*, 6 Ha. 463), and duty is payable at once on the PRINCIPAL value.

17. BEQUEST LIMITED TO GO ON THE TRUSTS OF A CERTAIN WILL OR SETTLEMENT.—Here the trusts of the will or settlement are in effect incorporated in the will of testator, and duty is payable accordingly; generally on the *corpus* by virtue of the provisions of s. 12 of 36 Geo. 3, c. 52. See *Re Palmer*, 3 Hurlst. & Norm. 26.

18. BEQUEST TO A LEGATEE,

or (*a*) A SUBSTITUTED LEGATEE;

or (*b*) HIS EXECUTORS, ADMINISTRATORS AND ASSIGNS.

(*a*) £500 to A., and if he die in testator's lifetime then to A.'s residuary legatees; or to A.'s next-of-kin.

(*a*) Where given to N. and O. as joint tenants, as to liability to Succession Duty on death of either without severance, see "Joint Tenancy."

LEGACY AND LEGACY DUTY—*continued.*

Here the residuary legatees or next-of-kin are substituted legatees under the will of the original testator.

(*b*) £500 to B., or "should he die before me, then to his executors, administrators and assigns."

Here the decision in *Perry's Executors* v. *The Queen* (L. R. 4 Ex. 27) applies, Legacy Duty being payable on the gift to B., and the legacy less the duty forms part of B.'s personal estate, and as such is liable to Probate and Legacy Duty under his will or intestacy.

19. Bequest subject to a Contingency.—£600 to C. on his attaining twenty-one and in default of his attaining twenty-one to D. (liable to a different rate of duty).

Here the duty is to be paid as if the £600 was absolutely bequeathed to C., subject to a readjustment of the duty should the contingency happen (ss. 17 & 34 of 36 Geo. 3, c. 52); but see "Contingency."

20. Conditional Legacy.—£10,000 to D. on condition of his taking the name and arms of testator. Annuity of £180 to E. on condition that he does not prove against the estate for a sum of £500 which he lent to testator (*Sweeting* v. *Sweeting*, 1 Drew. 330).

Here it is held that if the legatee accepts the gift (which it is open to him to disclaim) he must take it with all its incidents, including the liability to Legacy Duty. He in fact must pay on the full amount of the legacy without any deduction. A deduction can, however, be taken against Probate, or Estate Duty, of the debt of £500.

21. Bequest to A. for Life and on his Death—

(*a*) To the children of B. as A. shall appoint.

(*b*) As A. shall appoint, and in default of appointment to C.

(*c*) As A. shall appoint, and in default of appointment to himself (A.).

In case (*a*) the bequest is chargeable with duty as a bequest to different persons in succession (ss. 18 and 12 of 36 Geo. 3, c. 52), so that if A. and the children of B. are liable to the same rate of duty, duty will be payable on the bequest as "in the case of a legacy to one person."

In case (*b*), where A. and C. are liable to different rates of duty, duty is payable in the first instance on the value of A.'s life interest, and upon A.'s executing the power, duty is then payable upon the bequest as if immediately given to A., allowance being, however, made for any duty previously paid in respect of such life interest. In case (*c*) duty is payable as if the bequest was an absolute one in the first instance without such power of appointment (s. 18).

22. Bequest upon such Trusts as C. shall Appoint.—C. on appointing is liable to duty (Succession Duty, s. 4 of 16 & 17 Vict. c. 51; Hanson, 3rd ed. p. 89), but not at the higher rates. See "Exemptions."

23. Gift of Money to be laid out in Land.—£10,000 to be laid out in the purchase of real estate in the county of Hants to be conveyed to E. in fee simple.

Here the £10,000 "shall be charged with and pay duty as personal estate" (s. 19).

LEGACY AND LEGACY DUTY—*continued.*

Where the money is given so as to be enjoyed by different persons in succession, see Examples of "Gifts by way of ANNUITY," "Annuity."

24. PORTIONS.—Any capital sums not exceeding £6000 for one, £8000 for two, £10,000 for three, £12,000 for four or more, which the tenants-for-life entitled in possession to the MANSION HOUSE, etc., at Rusper are empowered to charge thereon for the benefit of YOUNGER children, the said real estate not to be liable in all for more than £12,000.

Succession Duty at the higher rates, and not Legacy Duty at the lower rates, is payable where the testator dies before July 1, 1888, if the donee of the power to charge dies after that date, having exercised the power.

If, however, the original testator charged and the life-tenant could only appoint, Legacy Duty at the lower rates will be payable.

NOTE.—Where the tenant-for-life appoints capital sums to his younger children in exercise of the power, and directs—

(*a*) Such sums to be RAISED on their respectively attaining the age of twenty-one, the interest thereof in the mean time to be applied for their benefit, no claim for Legacy Duty on the sums appointed will arise until they respectively vest; but Legacy Duty will be payable from time to time on the sums applied by way of interest.

As the person taking the real estate subject to the charges is entitled to take a deduction thereof in estimating the value of his succession (s. 34 of 16 & 17 Vict. c. 51), a claim for Succession Duty will arise in respect of a deduction so taken on the death under twenty-one of any one of such younger children, the charge merging in the real estate.

(*b*) Such sums to be RAISED and invested, the income to be applied during minority. Here duty is payable, as in the case of an immediate legacy. When portions do not merge, see "Merger."

As to gifts by way of annuity, see "Annuity."

As to bequest of residue, see "Residue."

IV. Abatement of, see "Abatement."

Ademption of, see "Ademption."

Charged on mixed fund, see "Mixed Funds."

Composition for, see "Compromise."

Cumulative, see "Cumulative Legacies."

Demonstrative, see "Demonstrative Legacy."

Disclaimer of, see "Disclaimer."

Exemption of, from Legacy Duty, see "Exemptions."

General, see "General Legacy."

Interest on, see "Interest."

Lapse of, see "Lapse."

Legacy to attesting witness, see "Witness."

Payment of, into Court, where legatee an infant, or abroad, see "Payment into Court."

Payment or receipt of, where liable to duty, without taking or signing the proper receipt for the same, subjects the persons so paying or receiving the legacy to

LEGACY AND LEGACY DUTY—*continued.*

a penalty of £10 per cent. on the amount or value thereof (s. 28 of 36 Geo. 3, c. 52).

Pecuniary, see "Pecuniary Legacy."

Retainer or satisfaction of, see "Retainer."

Specific, see "Specific Legacy."

Substitutional, see "Substituted Legatee."

Vesting of, see "Vesting."

LEGITIM.

The legal share of the father's free moveable property due on his death to his children. Where a father dies leaving a widow and children, his free moveable estate is divisible into three equal parts: one-third part is divided equally amongst all the children as *legitim*; another third goes to his widow as her *jus relictæ*; and the remaining third is called "dead's part," which the father may dispose of as he pleases by will.

If he die intestate, the "dead's part" goes to his children as next-of-kin. If the father leave no widow the *legitim* is one-half instead of one-third (*Bell's Scotch Law Dict.*).

LIABILITY.

1. For the payment of Death Duties, see "Payment."
2. Of executor for acts of co-executor—

An executor having, independently of his co-executor, a full and absolute control over the testator's personal assets, and being competent to give valid discharges by his own separate act, is generally answerable for his own act, and not for the acts of his co-executor. See "Executor," and "Co-executor."

LIEN.

1. Since 30 & 31 Vict. c. 69, s. 2, the term mortgage embraces a vendor's lien on property purchased by a testator (not intestate), and, therefore, the devisee who takes the estate takes it *cum onere*.

40 & 41 Vict. c. 34 extends this to the case of the purchaser dying intestate.

2. The Crown has no lien over one portion of the property (*e.g.* legacy or share of residue), in respect of the duty upon other gifts made by the same will, the liability of a legatee (and therefore of a purchaser from a legatee) being limited to the interest which he takes (*Attorney-General* v. *Giles*, 5 Hurl. & N. 255; *Hicks* v. *Keat*, 3 Beav. 141; *Wright* v. *Barnewell*, 13 Jur. 1041).

Nor where a legacy is given to several persons in succession is there any lien on the *corpus* in respect of the duty payable by the tenant-for-life; the remainderman not being liable therefor (*Bowra* v. *Rhodes*, 10 W. R. 747).

3. **Lien for premiums paid.**

Where A. (not being a mere volunteer) pays premiums to prevent the lapse of a policy of assurance, then he (A.) is entitled to a lien for the amount so paid on the proceeds of the policy.

LIFE POLICY. See "Policy."

LIGHTHOUSE. Profits arising from the tolls of, held to be real estate. See "Tolls."

LIMITATIONS.

(*a*) **Limitations of claims for Death Duties.**

Purchasers and mortgagees are exempted from liability to **Succession Duty** after the expiration of—

Six years from the date of notice to the Commissioners "of the fact that the successor, or any person in his right, or on his behalf, has become entitled in possession to his succession, or to the receipt of the income and profits thereof, or from the date of the first payment by such successor or person of any instalments or part of the duty, in case the successor shall not have availed himself of the option given to him by s. 22 of the Customs and Inland Revenue Act, 1888, or after two years from the payment by such successor of the last instalment or part of the duty, if he has availed himself of such option."

or, Twelve years (in the absence of such notice or payment) "from the happening of the event (whether before or after the passing of this Act), which gave rise to an immediate claim to such duty."

or, Six years from May 31, 1889 (where the period of 12 years expires within six years from the date of the passing of this Act), 52 Vict. c. 7, s. 14.

S. 12 (1) not to apply to successors or accountable persons other than purchasers or mortgagees (s. 12 (3)). See also 43 Vict. c. 14, s. 12.

This relief is extended whether the mortgage or sale is effected in the life-time of the tenant-for-life, or after his death, provided the mortgagee or purchaser is otherwise within the section.

Estate Duty.

S. 8 (2) of Finance Act, 1894, enacts that—

SS. 12 to 14 of the Customs and Inland Revenue Act, 1889, **shall apply as if Estate Duty were therein mentioned as well as Succession Duty,** and as if an account were not settled within the meaning of any of the above sections until the time for the payment of the duty on such account has arrived.

(*b*) **Statutes of Limitation, periods fixed by:**

Bill of exchange or promissory note, payable at a certain period after date.	6 years after it falls due (21 Jac. 1, c. 16).
Bond of specialty	20 years (3 & 4 Will. 4, c. 42, s. 3).
Debt (not of specialty)	6 years (21 Jac. 1, c. 16, s. 3).
Legacies	12 years (37 & 38 Vict. c. 57, s. 8). (*a*)
Mortgage, money secured by ..	12 years (*Ibid.* s. 8). (*b*)

(*a*) A legacy given upon an **express** trust is exempt from this statute (36 & 37 Vict. c. 66, s. 25 (2)); *Re Davis; Evans* v. *Moore* (1891), 3 Ch. 119; but not if charged on land (37 & 38 Vict. c. 57, s. 10). And after Jan. 1, 1890, a trustee or executor may plead the Statute of Limitations, except in case of claims for fraud or fraudulent breach of trust by him, or for trust property still held by him (Trustee Act, 1888, 51 & 52 Vict. c. 59, s. 8). Only six years' arrears of interest on the legacy can be recovered (3 & 4 Will. 4, c. 27, s. 42).

(*b*) And where the same debt is secured by a charge on land, and also collaterally, by the debtor's bond or covenant of even date then when the claim against the land is barred by the statute, 37 & 38 Vict. c. 57, the remedy on the collateral security is barred also (*Sutton* v. *Sutton*, 22 Ch. D. 511; *Fearnside* v. *Flint*, Id. 579). Otherwise, where the bond of even date is given by a third person, for here the bond debt is not barred until twenty years (3 & 4 Wm. 4, c. 42, s. 3; *Re Powers; Lindsell* v. *Phillips*, 30 Ch. D. 291, C. A.; *Darley* v. *Tennant*, 53 L. T. Rep. N.S. 257).

LIMITATIONS—*continued.*

Mortgage, redemption of	12 years from mortgagee taking possession, or from the last written acknowledgment, or part payment of principal or interest (*Ibid.* s. 8).
Rent, by deed, and rent-charge ..	20 years (3 & 4 Will. 4, c. 42, s. 3).
Personal estate of intestate, suit to recover from legal personal representatives.	20 years after accruer of right, the last accounting, payment or acknowledgment in writing (23 & 24 Vict. c. 38, s. 13).
Real property, action to recover ..	12 years after accruer of right, etc. (37 & 38 Vict. c. 57).

LINEALS.

Lineal ancestors first charged with Legacy Duty by the 55 Geo. 3, c. 184, Sch. Part III., are included in the term "predecessor" (16 & 17 Vict. c. 51, s. 2).

Lineal descendants first charged with Legacy Duty by 45 Geo. 3, c. 28.

Lineals are chargeable to Legacy Duty at the rate of 1 per cent. (55 Geo. 3, c. 184, Sch. Part III. (and to Succession Duty at the rate of 1 per cent. (s. 10 of 16 & 17 Vict. c. 51), and 1½ per cent. (s. 21 of 51 Vict. c. 8).

Lineals are exempt from Legacy Duty and Succession Duty in respect of personal property on which Probate or Account Duty has been paid (44 Vict. c. 12, s. 41), where grant taken out or account delivered on or after June 1, 1881.

Lineals are exempt from Legacy or Succession Duty on property which has paid Estate Duty **under the same disposition or devolution** under which the claim for Legacy or Succession Duty arises (Finance Act, 1894, s. 1).

The husband or wife of a lineal is chargeable with the same rate of Duty as a lineal (16 & 17 Vict. c. 51, s. 11, as to Succession Duty; and Treasury Minute of June 3, 1857, as to Legacy Duty).

LITTLEDALE CASE (L. R. 5 Ex. 275; 5 Eng. and Ir. H. L. 290).

C. (*ob.* 1832) bequeathed, *inter alia*, to collateral relations [3 per cent.] her reversionary interest in a settled fund, which fell in on death of B. (*ob.* 1868) to which she was entitled under her daughter A.'s intestacy (*ob.* 1831).

The Crown claimed two duties—

(1) Succession Duty at the rate of 1 per cent., under s. 15 of the Succession Duty Act, from C.'s executors as owners by derivative title of C.'s reversion.

(2) Legacy Duty at the rate of 3 per cent. under C.'s will. Held that the latter duty at 3 per cent. having been paid under the will, there was not also a claim for Succession Duty under the Settlement.

In other words, there cannot be two or more duties payable on the same property at the same time, and by the same event (s. 14), (*a*) (*Attorney-General* v. *Littledale*).

Example.

A. is tenant-for-life of a settled fund, and B. is entitled in remainder.

(*a*) Where the interest of any successor in any personal property shall, before he shall have become entitled thereto in possession, have passed by reason of death to any other successor or successors, then one duty only shall be paid in respect of such interest, and shall be due from the successor who shall first become entitled thereto in possession; but such duty shall be at the highest rate which, if every such successor had been subject to duty, would have been payable by any one of them.

LITTLEDALE CASE—*continued.*

B. predeceases A., and bequeaths his reversionary interest in the fund to C., who in turn predeceases B.

Succession Duty is payable by B. on A.'s death, and where the Legacy Duty under B.'s will, and under the will or intestacy of C. together exceeds the Succession Duty, Legacy Duty is payable in respect of such excess first under B.'s will and then the remainder (if any) under C.'s will or intestacy.

LOCAL TAXATION GRANT.

S. 19 of the Finance Act, 1894, enacts that—

In substitution for the grant out of the Probate Duties under the Local Government Act, 1888, the Probate Duty (Scotland and Ireland) Act, 1888, and the Local Government (Scotland) Act, 1889, there shall be paid out of the proceeds of the Estate Duty derived from personal property, such sum as the Commissioners, in accordance with regulations made by the Treasury under those Acts, may determine to be an amount equal to **one and a half per cent.** on the net value of such property in respect of which Estate Duty is leviable as would, if this Act had not been passed, have been chargeable with the duty imposed by s. 27 of the Customs and Inland Revenue Act, 1881, on Inland Revenue affidavits, and the first-mentioned Acts shall apply, as if the sum so determined were the Probate Duty grant or one-half of the proceeds of the sums collected in respect of the Probate Duties (as the case requires) within the meaning of those Acts.

Treasury Minute (Mar. 11, 1895).

My Lords read s. 19 of the Act, 57 & 58 Vict. c. 30, which authorizes the surrender to local taxation of an amount equal to 1½ per cent. on the net value of personal property in the United Kingdom in respect of which Estate Duty is leviable by that Act, and probate or inventory duty was formerly leviable, in lieu of the surrender of one moiety of the Probate Duty under the Acts of 1888 (51 & 52 Vict. c. 41, and c. 60).

Under the regulations issued by the Board of Inland Revenue, the Estate Duty under the Finance Act, 1894, is collected as follows:—

(*a*) By means of adhesive or impressed stamps, in the case of small estates the gross value of which does not exceed £300 or £500, and which by s. 16 of this Act are charged with the fixed duty of 30*s.* and 50*s.* respectively.

(*b*) In all other cases the duty is paid in cash, and a receipt in writing is given for it on the affidavit or account.

In order to give effect to the intention of Parliament, my Lords direct—

1. That the Commissioners of Inland Revenue shall provide for a complete record of the net capital of personal property in the United Kingdom included in affidavits or inventories leading to grants of probate other than those bearing 30*s.* or 50*s.* stamps, and shall transfer a sum equal to 1½ per cent. of such net capital to the Local Taxation Accounts, England and Scotland, and the Guaranteed Fund Account, Ireland.
2. In respect of affidavits and inventories bearing 30*s.* and 50*s.* stamps, inasmuch as no accurate record of the net personalty therein contained can be kept, the Commissioners of Inland Revenue shall ascertain the number of such affidavits, and shall transfer to the

LOCAL TAXATION GRANT—*continued.*

Local Taxation Accounts a sum equal to 1½ per cent. on £170 for each 30s. affidavit, and a sum of 1½ per cent. on £310 for each 50s. affidavit, the said sums of £170 and £310 being taken to represent the average net personalty comprised in each 30s. and 50s. affidavit respectively.

LOCALITY.

1. **Lands** and (generally) **goods** are held to be situate at the place **where they actually lie.**
2. **Debts and choses in action** are situate **where** the person against whom the claim exists **resides,** *i.e.* in the country **where** such **claim can be enforced** (*Attorney-General* v. *Dimond*, 1 Cr. & Jer. 356, French Rentes; *Attorney-General* v. *Hope*, 1 Cr. M. & Rosc. 530, American stock, part of the public funds of the United States). And where **a foreign debt** (Indian Government promissory notes) was agreed to be converted into an English security, and the owner died before its conversion was effected, it was held the debt was **not liable to Probate Duty,** as it could not be sued for in this country (*Pearse* v. *Pearse*, 9 Sim. 430).

As regards **shares in partnership property** it is enacted by s. 43 of the Partnership Act, 1890, that—

"Subject to any agreement between the partners, the amount due from surviving partners to the representatives of a deceased partner in respect of the deceased partner's share, is a debt accruing at the date of the death."

The claim of the representatives of the surviving partner being in the **nature of a simple contract debt** is situate in the jurisdiction of the country where the debtor resides. Where, however, the deceased partner's share may, under the partnership articles, be sold by his executors, the place where the business is carried on is a determining factor (*Laidlay* v. *Lord-Advocate* (15 App. Ca. 468)). See Hanson, 4th ed. pp. 238, 239.

A specialty debt is situate not where the debtor resides, but where the instrument lies at the time of the creditor's death (*Commissioners of Stamps* v. *Hope* (1891) A. C. 476).

This rule, however, so far as regards specialty debts due from persons in the United Kingdom, is modified by s. 39 of the 25 & 26 Vict. c. 22, which enacts that—

"For the purposes of the Stamp Duties on probates of will and letters of administration, debts and sums of money due and owing from persons in the United Kingdom due to any person at the time of his death on obligation or other specialty, shall be estate and effects of the deceased within the jurisdiction of Her Majesty's Court of Probate in England or Ireland, as the case may be in which the same would be if they were debts owing to the deceased upon simple contract, without regard to the place where the obligation or specialty shall be at the time of the death of the deceased."

So that a specialty debt on a deed situate in England due from A. (resident abroad) and a specialty debt on a deed situate abroad due from B. (resident in England) are each held to be situate in England. The locality of a mortgage debt follows this rule, and does not in any way depend upon the situation of the property comprised in the mortgage.

LOCALITY—*continued.*

3. **British ships** are situate at the port of the United Kingdom where they are registered (27 & 28 Vict. c. 56, s. 4).
4. **Goods on the high seas,** capable of being dealt with here by means of the bills of lading in this country, wherever actually situate, are to be held situate in England, *i.e.* where the bills of lading are (*Attorney-General* v. *Hope, supra*).
5. **Goods in transitu** to this country which arrive after the death of the deceased, are held situate in this country (*Attorney-General* v. *Pratt*) (Wyckoff's case); as in fact is all property to which it is necessary to make title here in order to enable the deceased's representatives to receive and deal with it here.
6. **Bonds or other securities,** *e.g.* bills of exchange, which are transferable by delivery only, without the necessity of any act done out of England to render the transfer valid, and the money due thereon (although due from foreigners abroad) are held situate in England (*Attorney-General* v. *Bouwens*, 4 M. & W. 171; *Stern* v. *Reg.* (1896), 1 Q. B. 211); certificates of shares in a foreign country saleable in this country and transferable by delivery (*Goodwin* v. *Robarts*, L. R. 10 Ex. 76; 1 App. Ca. 476; scrip issued in England, entitling bearer to foreign bonds (*Venables* v. *Baring* (1892) 3 Ch. 527 (American railway bonds)).
7. Property in an **incorporated bank or trading company** is held to be situate where the head office is, *i.e.* the place where the administrative business of the company is conducted (*Attorney-General* v. *Higgins*, 2 H. & N. 339), therefore where a chartered bank (whose head office was in England) was being wound up, it was held that the official liquidator could not remit to the representatives of a creditor who had died domiciled in India any dividend on account of the debt without the production of a properly stamped English Probate (Fernandes' case, L. R. 5 Ch. App. 314).

It is enacted by the Revenue Act, 1885 (47 & 48 Vict. c. 62, s. 11) that—

"Notwithstanding any provision to the contrary contained in any local or private Act of Parliament, the production of a grant of representation from a Court in the United Kingdom by Probate or Letters of Administration or Confirmation, shall be necessary to establish the right to recover or receive any part of the personal estate and effects of any deceased person situated in the United Kingdom."

And the Revenue Act, 1889 (52 & 53 Vict. c. 42, s. 19), provided that—

"Where a policy of life assurance has been effected with any assurance company by a person who shall die domiciled elsewhere than in the United Kingdom the production of a grant of representation from a Court in the United Kingdom shall not be necessary to establish the right to receive the money payable in respect of such a policy." See also "Immoveables;" "Domicile."

Foreign Assets.

Foreign stock, to fully transfer which **some act must be done** in a foreign country, must be held to be situate out of England, for the certificate or other documents, though being in England, are mere evidence of the existence of the debt and the stock is situate within the jurisdiction where the act has to be done. (*a*) And the locality would not appear to be affected by an agreement

(*a*) Therefore, foreign bearer bonds, *de facto*, situate in the United Kingdom, colonial inscribed stock transferable on the books of the Bank of England, or elsewhere in the United Kingdom, are situate in the United Kingdom. And 46 & 47 Vict. c. 30 directed

LOCALITY—*continued.*

(not carried out) to convert into an English security (*Pearse* v. *Pearse*, *supra*) nor by a sale or conversion after the death (*Laidlay* v. *Lord-Advocate*, *supra*).

In this latter case the firm was substantially foreign, although only two out of the sixteen partners resided abroad, and the deceased's share or interest therein was held to be situate abroad. See "Partnership."

A., who died domiciled in England, bequeathed by his will, proved in England, one-fourth of his residuary personal estate to his wife.

Part of the residue consisted of money invested in mortgages in New Zealand.

Before his estate had been fully administered, and before any part of the mortgages had been realized or appropriated in any way to particular shares of the ultimate residue, the wife died.

Upon an information by the Attorney-General, claiming Probate Duty from the executors of the wife: Held, that the right of the executors of the wife to claim from the executors of the husband, due administration of the husband's estate, including that part of it which consisted of the New Zealand mortgages, was an English asset, and that, therefore, the estate of the wife was liable to Probate Duty in respect of the value of one-fourth of the New Zealand mortgages (*Attorney-General* v. *Lord Sudeley, and others*, 74 L. T. 91; affirmed on appeal, 75 L. T. 391 (1897) A. C. 11).

Dictum of Lord Esher, M.R., in this case.

The distinction between assets of the estate which are liable to Probate Duty, and assets of the estate which are not liable to Probate Duty, depends upon the locality of the asset at the time of the testator's death. If the locality is outside the jurisdiction, the asset is called a foreign asset, and is not liable. Where the asset is a specific tangible article, there can be no difficulty in determining its locality. Where the asset is not a specific article, but what is called a chose in action, rules have been laid down to determine its locality. As to debts due to the testator at the time of his death, the rule to be deduced from the cases is that, if the debtor is at the date of the death of the testator abroad, and the debt is payable only abroad, and could only be got from him abroad, either by some act to be done there, or some proceeding taken there, the debt is a foreign asset; but if, although the debtor is abroad, a legal proceeding could be taken here which would in law directly order and enforce the payment here of the debt, then the debt is an asset here liable to the Probate Duty.

Thus, in *Attorney-General* v. *Dimond* (1 Cr. & Jer. 356), the testator was a creditor of the French Government for 32,727 francs of Rentes at 5 per cent. These were only payable by the French Government, the debtor, in France, and payment could only be obtained by some act done in France. It was for that reason held that the debt, the asset, was not such an asset as was liable to pay Probate Duty in England.

So in *Attorney-General* v. *Hope* (*supra*), in 1834, it was held in the House of Lords, that goods in America at the date of the death of the testator, sent there by the testator for sale by his agents, and debts, both simple and contract debts due to him in America, and money in American funds, were not liable to

that the shares in a company belonging to a deceased member registered in their colonial registry under the Act should be considered part of his estate in the United Kingdom (s. 7 (*b*)). However, by s. 18 of 52 & 53 Vict. c. 42, this provision is confined to persons domiciled in the United Kingdom. See also, "American Railway Shares."

LOCALITY—*continued.*

Probate Duty here, although all would eventually come to the hands of the executors here.

So in *Pearse* v. *Pearse* (*supra*), in 1838, by Shadwell, V.-C., notes of the Government of India payable in India were held not liable, because they were payable only in India.

In *Attorney-General* v. *Bouwens* (*supra*), Dutch bonds due to the testator were held liable, but it was because they were payable in England.

The case of *Attorney-General* v. *Higgins* (*supra*) is really to the same effect. The head office of the railway company was in Scotland. The shares were therefore payable in Scotland. It was held that "the executor ought to have exhibited an inventory in Scotland" (74 L. T. 91).

See, further, Dicey's "Conflict of Laws;" Hanson's "Death Duties," 4th ed.

LOCKE KING'S ACT (17 & 18 Vict. c. 113). (*a*)

Before this Act (which is not to affect any rights claimed under any deed, will, etc., made before Jan. 1, 1855), the personal estate was the fund primarily liable to pay a mortgage debt; since the Act, the mortgaged estate itself is primarily liable, unless an intention to exonerate is manifest.

Mortgages of copyholds and equitable mortgages (*Pembroke* v. *Friend*, 1 J. & H. 132) were held to be within the Act; not so, however, mortgages of leaseholds or vendor's lien for unpaid purchase-money.

The Amendment Acts.

30 & 31 Vict. c. 69, s. 2, extended the term mortgage so as to include a vendor's lien on property purchased by a testator.

It also enacted (s. 1) that a general direction to pay debts out of personal estate, by a testator, should not be deemed a "contrary intention," so as to take the case out of the Act, unless such intention was further declared expressly or by implication.

40 & 41 Vict. c. 34 extends the Act to include a vendor's lien for unpaid purchase-money of a purchaser dying INTESTATE, and also to hereditaments, of whatever tenure—therefore including leaseholds—unless a contrary intention is expressed by testator; and a charge or direction to pay debts out of residuary realty and (or) personalty is not to be deemed a contrary intention.

Under the present law a direction that the personalty shall be liable before the mortgaged estate must, in order to be effectual, unmistakably refer to or describe the mortgage debt (*Nelson* v. *Page*, 7 Eq. 25; *Elliott* v. *Dearsley*, 16 Ch. D. 322).

The above Acts do not, however, render the devisee personally liable (*Syer* v. *Gladstone*, 30 Ch. Div. 614, 616; 34 W. R. 565). The devisee of land taken in execution under an elegit for a judgment debt is within 40 & 41 Vict. c. 34, s. 1, and the debt must be borne by him in exoneration of the personal estate of the testator (*Re Anthony* (1892), 1 Ch. 450).

Deduction against Probate Duty (*and Legacy Duty*).

"Where the mortgagor's real property and also his personal estate are given to the *same person*, it seems that notwithstanding the provisions of the Acts in question (*i.e.* the above Acts), he may require the whole personal estate to be applied in discharge of the mortgage debt (in like manner as the

(*a*) Now known, by virtue of the Short Title Act, 1896, as the **Real Estate Charges Acts, 1854, 1867, and 1877.**

LOCKE KING'S ACT—*continued.*

mortgagor's heir-at-law being also his sole next-of-kin may apply whichever fund he pleases for that purpose), and therefore under such circumstances deduction may be taken under this section" (s. 28 of 44 Vict. c. 12). Hanson, "Customs and Inland Revenue Acts, 1880, 1881," p. 30.

Deduction against Estate Duty. See "Mortgage;" "Deductions."

LUNATIC.

INVESTMENT OF A LUNATIC'S PERSONALTY IN LAND.—The accumulations of a lunatic's personal estate were invested by his committees by order of the Lords Justices having jurisdiction in infancy in purchases of lands which under their Lordships' direction were conveyed to the committees, "their executors and assigns," upon trust for the lunatic, "his executors, administrators and assigns," with a declaration that the lands so conveyed (and all others to be purchased in lieu of them under any exercise of certain powers of sale and investment which were contained in the deed) should "to all intents and purposes be considered as part of the personal estate of" the lunatic.

Upon the death of the lunatic, who never recovered, HELD, reversing decision of Court of Appeal (16 Q. B. D. 408) and restoring the decision of Mathew and Smith, JJ. (14 Q. B. D. 895), that the value of the lands was part of the PERSONAL ESTATE of the lunatic at his death and liable to PROBATE DUTY (*Attorney-General* v. *Marquess of Ailesbury*, 12 App. Cas. 672).

"In the course of the argument some faint reliance was placed on the case of *Matson* v. *Swift* (8 Beav. 268). In that case there was EQUITABLE conversion during the testator's lifetime, actual conversion after his death. The proceeds were in Court. The Crown claimed PROBATE DUTY. The argument on behalf of the next-of-kin, and the decision of the Court proceeded on the ground that the right to PROBATE DUTY depended on the actual form and condition of the property at death; that the Crown was not entitled to enforce for FISCAL purposes equities between private parties; and that real estate, although converted out and out, was not within the jurisdiction of the ordinary, nor part of the 'estate and effects for or in respect of which probate' is granted under the Act of Geo. 3. That view is perfectly intelligible. But, after the decision of this House in *Attorney-General* v. *Brunning*, it was thought to be inconsistent with the grounds on which that case was decided, and it seems to have been finally exploded by the reasoning of James, the Vice-Chancellor, in *Forbes* v. *Steven*, which met with general acceptance, and has been followed in *Attorney-General* v. *Lomas*, and *Attorney-General* v. *Hubbuck*, both of which cases relate to PROBATE DUTY. In connection with this point it is to be observed that though the Probate Court never recognized the doctrine of equitable conversion, a different view is now taken in the Probate Division. In *In re goods of Gunn* (9 P. D. 242), the President granted probate of a married woman's will, or appointment, dealing only with real estate, which had been impressed with the character of personal estate, and he concluded his judgment in these words:—'I am of opinion that where freehold property has had impressed upon it a changed character by reason of the doctrine of equitable conversion, it is to be treated as PERSONALTY and PROBATE DUTY is payable, and it therefore follows that Probate must be granted. Probate must issue.' Under these circumstances it seems to me that no reliance can

LUNATIC—*continued.*

be placed upon *Matson* v. *Swift*, or, I may add, upon any of the glosses on that case" (*per* Lord Macnaghten).

The effect of this decision is now embodied in s. 123 of the Lunacy Act, 1890, (53 Vict. c. 5).

M.

MAINTENANCE.

In the case of devises and bequests to a woman for the support of her children, or of herself and her children, it is often a question whether she is to take a part of the beneficial interest; or, on the other hand, whether she is to take the beneficial interest, subject to a trust for her children, or whether she is to take the whole without any trust (*Gilbert* v. *Bennett*, 10 Sim. 371; *Jubber* v. *Jubber*, 9 Sim. 503; *Thorpe* v. *Owen*, 2 Hare, 607; *In re Harris*, 7 Exch. 344; *Costabadie* v. *Costabadie*, 6 Hare, 410).

A direction to apply part of the rents of real estate for the maintenance of X., until he marries or attains 21, is (where X. takes the real estate upon the happening of either event) not a legacy within s. 7 of 36 Geo. 3, c. 52, but is liable to Succession Duty under s. 2 of 16 & 17 Vict. c. 51.

As to gift for maintenance of animal, see "Animal."

MANITOBA.

Order in Council (Finance Act, 1894) not yet applied.

Death Duty imposed by "The Succession Duty Act, 1893" (56 Vict. c. 31).

Value of Property Liable to Duty.	Rate of Duty per cent.
Up to 25,000 dols.	1
Reaches 25,000 dols., but does not reach 50,000 dols.	2
„ 50,000 „ „ 100,000 „	3
„ 100,000 „ „ 250,000 „	4
„ 250,000 „ „ 500,000 „	5
„ 500,000 „ „ 600,000 „	6
„ 600,000 „ „ 800,000 „	7
„ 800,000 „ „ 900,000 „	8
„ 900,000 „ „ 1,000,000 „	9
„ 1,000,000, or more	10

Exemptions.

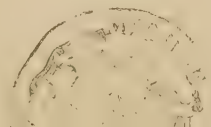
(1) Any estate whose value (after payment of all debts for Administration expenses) does not exceed 4000 dols.

(2) Property passing under a Will, intestacy or otherwise, to or for the use of the father, mother, husband, wife, child, grandchild, daughter-in-law or son-in-law of the deceased, or one or more of such persons, where the value of the property so passing does not exceed 25,000 dols.

(3) Property devised, bequeathed or passing to any one person, being the father, mother, husband, wife, child, grandchild, daughter-in-law or son-in-law of the deceased, under a Will or intestacy, whose total value does not exceed 10,000 dols.

MANOR.

A manor being "real property" producing a fluctuating income, the Succession Duty thereon is to be calculated upon the average profits or income derived therefrom,



MANOR—*continued.*

after deducting all necessary outgoings, during such a number of preceding years as shall be agreed upon between the commissioners and the successor, before the first payment of duty on the succession shall have become due, and in default of such agreement the principal value is to be ascertained and the annual value taken at 3 per cent. thereon (s. 26 of 16 & 17 Vict. c. 51).

MANSION HOUSE

And the demesne lands occupied therewith are included within the definition of **agricultural property** (*q.v.*), Finance Act, 1894, s. 22, 1 (*g*).

MARRIAGE CONSIDERATION.

As marriage constitutes a valuable consideration, a settlement before the marriage, or after the marriage if made in pursuance of a binding ante-nuptial agreement, is not a voluntary one.

Account Stamp duty is not payable in respect of property passing under a marriage settlement to persons within the consideration; but the duty attaches where the beneficiaries take under a voluntary limitation in the settlement, see "Voluntary Settlement."

Marriage alone, although a valuable consideration, and although accompanied by the release of a possibility of dower or freebench, is not a "valuable consideration in money or money's worth" within the meaning of s. 17 of 16 & 17 Vict. c. 51 (*Floyer* v. *Bankes*, 3 De G. Jo. & Sm. 306).

"In money or money's worth."

"These words appear to have been selected for the purpose of excluding the consideration of marriage" (*per* Lord Westbury, C., in this case).

Debts [for example, a covenant by settlor to pay money on his death] in consideration of marriage cannot be deducted against Estate Duty, for they are not incurred for "consideration in money or money's worth" (Finance Act, 1894, s. 7, 1 (*a*)). See "Covenant;" "Deductions."

MARRIED PERSONS.

Legatees or successors married to relations of the testator or predecessor are liable to the same rate of duty as their wives or husbands.

S. 11 of the Succession Duty, 1853 (16 & 17 Vict. c. 51), enacts that where the successor's wife or husband is of nearer consanguinity to the predecessor than the successor, the rate of duty payable is that which would have been chargeable if the wife or husband had been the successor.

This provision is also applicable to legacies which become payable after June 3, 1857.

The relationship of husband or wife must be established before the time when the duty becomes payable.

The provisions of this section do not apply where the predecessor or testator has married a relation of the successor or legatee.

MARRIED WOMEN'S PROPERTY.

1. *Real Estate.*

If married before Jan. 1, 1883, all her real estate in possession (or accruing to her before Jan. 1, 1883), and not settled to her separate use, is by law vested in the husband and wife during coverture in right of the wife. The right of possession was in the husband, the right of property in the wife. (*a*) He in

(*a*) Finance Act, 1896, s. 15 (4), enacts that where the deceased person was entitled

MARRIED WOMEN'S PROPERTY—*continued.*

fact is entitled to the rents and profits during their joint lives (subject to any rights acquired under the Act of 1870). He may lease the real estate for 21 years, which will bind the wife and her representatives, but cannot (subject to this) convey (*b*) or charge (*c*) the lands for any longer period than while his own interest continues. After the husband's death, leaving the wife surviving, it passes to her absolutely; after her death, leaving him surviving, it passes (if issue born alive during the mother's existence, etc., see "Curtesy,") to him as tenant by the curtesy of England during his life, and after his death to her heirs.

If married on or after Jan. 1, 1883, the husband's right (apart from any right under a settlement, and his interest therein on the death of his wife intestate as tenant by the curtesy, see *Hope* v. *Hope* (1892), 2 Ch. 336; 61 L. J. Ch. 441), is taken away; the same applies where the marriage was before Jan. 1, 1883, and the title to the real estate accured on or after that date.

The husband, moreover, will no longer have an estate by entireties in any real (or personal) estate conveyed, devised, or bequeathed to him and his wife during the marriage (*Ward* v. *Ward*, 14 Ch. D. 506); but now in such a case the husband and wife will hold either as joint tenants or as tenants in common, and will each be entitled to one undivided moiety with or without (as the case may be) the right of survivorship (*Jupp* v. *Buckwell*, 39 Ch. D. 148; *Mander* v. *Harris*, 24 Ch. D. 222; 27 Ch. D. 166).

The will of a married woman, which disposes only of realty but appoints executors, will be admitted to probate where a portion of her estate consists of personalty to which she is entitled by virtue of the Married Woman's Property Act, 1882 (*Re Cubbon*, 11 P. D. 169; 35 W. R. 200).

The Married Woman's Property Act, 1882, enacts that all real or personal property which belongs to a woman married on or after Jan. 1, 1883 [or before that date where the title to the property accrued after] is made her separate property. And this includes property over which she (at the time of her marriage) had a general power of appointment, and which in default of appointment, is limited to her, her executors, administrators and assigns (*Re Davenport, Turner* v. *King* (1895), 1 Ch. 361).

2. *Personal Estate.*

(*a*) *Personal chattels in possession.*

Where marriage before 1870, and property not settled to wife's separate use, the husband took absolutely, except in the case of wife's paraphernalia. So that where a married woman, for whose sole benefit money was subject to a trust for investment in land, elected to take the money as personalty, her husband thereupon became entitled thereto by the

by law to the rents and profits of real property (as defined by s. 1 of the Succession Duty Act, 1853 (16 & 17 Vict. c. 51)) of his wife, and has died in her lifetime, such property shall not be deemed for the purpose of the principal Act to pass on his death by reason of her then becoming entitled to the property in virtue of her former interest.

(*b*) They could only be alienated by the wife by deed acknowledged with the concurrence of her husband who had to join in the deed.

(*c*) Should the wife join with the husband in mortgaging her land as a security for his debt, she is entitled to have the debt discharged by him, or out of his estate, and the land reconveyed to her—even though the right of redemption should have been reserved to the husband and his heirs; unless it is evident that she intended to part absolutely with all interest in the land (*Huntingdon* v. *Huntingdon*, 2 L. C. 1032; *Re Duke of Marlborough, Davis* v. *Whitehead* (1894), 2 Ch. 133).

MARRIED WOMEN'S PROPERTY—*continued.*

jus mariti (*Oldham* v. *Hughes*, 2 Atk. 452). The 1870 Act (33 & 34 Vict. c. 93, amended in 1874 by 37 & 38 Vict. c. 50), however, gave a married woman certain property as her separate property. And if the marriage was on or after Jan. 1, 1883, or before that date where the title to the property accrued after, the property is the separate property of the wife; but where the wife died intestate the husband took *jure mariti* without the necessity of a grant of administration, and, therefore, payment of Probate or Administration Duty.

(*b*) *Chattels real.*

Belonged (even though reversionary),* by the *jus mariti* to the husband, who was entitled not only to the rents and profits, but might alienate them (not will them) during coverture, and they were liable for his debts: where the chattels real belong to the wife for her separate use, and she died intestate, the husband took *jure mariti*, without any necessity for taking out administration; but subject to her debts (*Surman* v. *Wharton* (1891), 1 Q. B. D. 416). If the wife survived, and the chattels real were not alienated, she took.†

The equity of redemption of wife's mortgaged leaseholds belonged to the survivor of the husband and wife.

Where married (or title accrued) on or after Jan. 1, 1883, the separate property of the wife.

(*c*) *Choses in action.*

Belonged to the husband only when reduced into possession, the wife's right not being divested by the marriage (*Purdew* v. *Jackson*, 1 Russ. 1); if he died before the reduction into possession, they survived to the wife; if the wife died before the reduction into possession, the husband took as her administrator, subject to her debts.

Separate property of the wife under the Married Women's Property Act, 1882, but if not reduced into possession, and not disposed of by her will or otherwise, it would appear that this Act does not deprive the husband of his right to them as her administrator.

(*d*) *Reversionary personalty, other than chattels real.*

By Malins' Act (20 & 21 Vict. c. 57), a married woman might by deed acknowledged, her husband joining, dispose of her reversionary interest in personal estate, to which she became entitled under an instrument made after Dec. 31, 1857 (except an interest taken under her marriage settlement), unless there was a restraint against alienation.

* If the interest in expectancy is such that it could not by any possibility come into possession during coverture, the husband could not dispose of it while it was outstanding (*Duberley* v. *Day*, 16 B. 33).

† 1. Death of wife intestate, husband surviving. No grant to the property necessary, whether or not the separate property of the wife, and no administration duty payable.

2. Death of wife testate, husband surviving.

Separate property of the wife.

(i.) Where disposed of by the will, grant of Probate necessary, and Probate or Estate Duty payable.

(ii.) Where not disposed of by the will. If death before Aug. 2, 1894, as in (1); if after that date, Estate Duty payable under s. 2 (1*a*) of Finance Act, 1894, because the property was at her death property of which she was competent to dispose, although in fact she did not do so.

Not separate property.

If death before Aug. 2, 1894, as in (1). If after that date, no Estate Duty payable, because the wife was not "competent to dispose."

MARRIED WOMAN, WILL OF A.

By the Wills Act (1 Vict. c. 26), s. 18, the will of every woman made on or after Jan. 1, 1838, is revoked by her marriage, except when the will is made in execution of a power of appointment, and in default of it, the real or personal property thereby appointed would not pass to her heir, customary heir, executor, administrator, or next-of-kin, under the Statutes of Distribution.

By s. 8, "no will made by any married woman shall be valid, except such a will as might have been made by a married woman before the passing of this Act."

By s. 7, "no will made by any person under the age of twenty-one years shall be valid."

A married woman (before the Married Women's Property Act, 1882) could dispose by will of—

Property to which she was entitled as executrix and not beneficially.

Personal property (not separate) where the husband consented to the particular will made (his death operated as a revocation of the will), and survived and did not retract his consent before probate.

Real and personal property and the savings thereof, settled to her separate use, whether in possession or in reversion, including the savings of pin-money; or of alimony.

Real and personal property over which she had a power of appointment.

Property acquired by her after the date of a protection order (which is retrospective), or after the date of a decree of judicial separation, or after a decree of divorce.

Real and personal property, when her husband was banished for life by Act of Parliament.

Statutory property under the Act of 1870.

But she could not dispose of freeholds or copyholds, or of a contingent interest in real estate, nor defeat her husband's title as tenant by the curtesy. And as she had no right of property in her paraphernalia until she became a widow, she could not dispose of the same in her husband's lifetime.

And now a wife married before Jan. 1, 1883, as regards her property acquired on or after that date, and also a wife married on or after that date, with respect to her property generally, is empowered to make a will as if she were a *feme sole* (ss. 1, 2, 5, and 23 of 45 & 46 Vict. c. 75).

Her will, dealing with her separate estate, is now admitted to probate in the ordinary form, without limiting the grant or reciting therein her separate estate (Probate Rules, March 29, 1887; *Re Price*, 12 P. D. 137; 35 W. R. 396).

However, the Courts have held that as regards her property, her will made during coverture operates only on such separate property as she is possessed of at the date of, or becomes entitled to, during the coverture (*In re Price, Stafford* v. *Stafford*, 28 Ch. D. 709); and that such will, unless it be re-executed by her when discovert, will not be effectual to dispose of property acquired, subsequently to the death of her husband.

The will of a married woman who dies in the lifetime of her husband, made during coverture and prior to the coming into operation of the Married Women's Property Act, 1882 (she having at the time capacity to make a will), is effectual, without re-execution, to pass separate property which she may acquire under the provisions of the Act (*Re Bowen* (1892), 2 Ch. 291).

However, as to the wills of married women who have **died since Dec. 5, 1893** (*Wylie* v. *Moffat*, 1895, 2 Ch. 116), s. 3 of the Married Women's Property Act, 1893, provides that **s. 24** of the Wills Act, 1837 (1 Vict. c. 26)—which

MARRIED WOMAN, WILL OF A—*continued.*

enacts that in the absence of a contrary intention a will shall be deemed to be executed **immediately before the death** of the testator—shall apply to the will of a married woman **made during coverture,** whether she is or is not possessed of or entitled to any separate property at the time of making it, and that such will shall not be required to be **re-executed or republished** after the death of her husband.

A will made before marriage will not revive on the husband's death without re-execution, and a subsequent marriage revokes the will of a married woman.

A married woman cannot give property for the erection of a church under the statute 43 Geo. 3, c. 108 (Queen Anne's Bounty, 1803) (*Clements* v. *Ward*, L. R. 35 C. D. 589).

The contracts of a married woman bind her separate estate, but the doctrine of *Pike* v. *Fitzgibbon*, 17 Ch. D. 454, that such contracts, made with a view to bind her separate estate, only bound such separate estate as was hers at the time of the contract, was annulled by the Married Women's Property Act, 1882 (*Cox* v. *Bennett* (1891), 1 Ch. 617).

S. 1 (4) of the Act is not retrospective (*Turnbull* v. *Forman*, 15 Q. B. D. 234).

MASSES.

Bequests to priests for offering masses for the souls of the dead, though valid in Ireland (*Commissioners of Charitable Donations* v. *Walsh*, 7 Ir. Eq. 34), are void in England as being for a "superstitious use" (*West* v. *Shuttleworth*, 2 M. & K. 684; *In re Blundell*, 10 W. R. 34; *Heath* v. *Chapman*, 2 Drew, 417); and such a bequest by a testator domiciled in England is void, although the legatee is resident abroad, where such a legacy is good. A., domiciled in England, bequeathed to priests of the Society of Jesus at Richmond, Victoria, £1000 to be spent in masses for the repose of the soul of his late wife and his own. *Held*, that the legacy being void by the law of A.'s domicile, as a gift to a "superstitious use," was not rendered valid by the fact that the legatees were domiciled in the colony of Victoria, although by the law of that colony the legacy would be valid (*In re Elliott, Elliott* v. *Johnson*, 39 W. R. 297).

Though such bequests are valid in Ireland they are not charitable, and are, therefore, void if they offend the rule against perpetuities (*Dillon* v. *Reilly*, I. R. 10 Eq. 152.

A gift, however, for the public celebration of the mass would appear to be charitable (*Perry* v. *Tuomey*, 21 L. R. Ir. 480).

Real estate devised for superstitious uses goes to the heir (*R.* v. *Portington*, 3 Salk. 334).

MERGER.

1. Where a greater and less estate meet in the same person in the same right, without any intermediate estate, the less estate will be merged or absorbed into the greater if the greater be the more remote.

For example—

A., entitled to an estate for life in certain lands becomes entitled to an estate in fee simple (or in tail) immediately expectant upon it. The estate for life merges in the fee.

A. (tenant-for-life) and B. (remainderman) sell to C., there is no merger, for C. during A.'s life holds in right of A., and after his death, in right of B. (*Treport's Case*, 6 Rep. 14).

A term of years, however great, will merge into an estate of freehold.

MERGER—*continued.*

An estate tail will not merge into a fee simple, for this would defeat the intention of the statute *De Donis*, so that a man may have at the same time, and in his own right, both an estate tail, and the immediate reversion in fee in the same land.

A term of years will merge in the immediate reversion for years, even when the term in reversion is of shorter duration than the term on which it is expectant.

By 36 & 37 Vict. c. 66, s. 25, there will be no merger by operation of law where the beneficial interest is not merged in equity (sub-s. 4). Therefore, there will be no merger where it appears that no merger was intended (*Snow* v. *Boycott*, 61 L. J. 591; (1892) 3 Ch. 110).

2. *Merger of charges*—

(*a*) Where a charge is paid off by a tenant-for-life, though entitled to the ultimate reversion in fee, on failure of issue (*Trevor* v. *Trevor*, 2 M. & K. 675), or a remainderman-in-tail, whose estate may be altogether defeated, or a tenant-in-tail whose estate is subject to an executory devise over, it will be presumed that he meant to keep it alive, unless there is evidence to the contrary.

Where A., a tenant-in-tail, is entitled to a charge on the estate, dies under twenty-one, there is no merger; but, generally speaking, where a tenant in fee simple† or a tenant-in-tail in possession, whose estate is not subject to an executory limitation over, and who can acquire the fee, becomes entitled to a charge upon the same estate, the charge merges unless the owner has shown an intention to keep it alive.

(*b*) Where A. is entitled to a charge and to the inheritance

(1) to both under the same instrument (*Grice* v. *Shaw*, 10 Ha. 76);

or, (2) first to charge, and later to the inheritance as devisee (*Forbes* v. *Moffat*, 18 Ves. 384);

or, (3) first to the inheritance, and later to the charge as a legatee (*Price* v. *Gibson*, 2 Eden. 115), or heir (*Powell* v. *Morgan*, 2 Vern. 90), or as next-of-kin (*Lord Compton* v. *Oxenden*, 2 Ves., jun., 260).

In all these cases, in the absence of any express intention shown by A., the Court will presume a merger if it is for A.'s benefit; or if it will in no way benefit him, to keep the charge alive (*Re Pride* (1891), 2 Ch. 135).

(*c*) A. is owner of an estate and of a subsisting charge thereon. A. mortgages or conveys the estate to B. without mention of the charge. There is a merger (*Tyler* v. *Lake*, 4 Sim. 351).

A., tenant in fee-simple, mortgages his estate to the trustees of his marriage settlement to secure a fund which he takes absolutely, subject to his wife's life interest therein. He then predeceases his wife. There is no merger (*Wilkes* v. *Collin*, 8 L. R. Eq. 338).

(*d*) **Effect of keeping the charge alive.**

The charge will go to the executor and be liable as personalty to Probate (or Estate Duty) and Legacy Duty (*Swabey* v. *Swabey*, 15 Sim. 502), and the inheritance to the heir (*Belaney* v. *Belaney*, 35 B. 469).

† Unless the charge was assigned to a trustee in trust for the owner of the inheritance, his "executors, administrators, and assigns," instead of his "heirs and assigns" (*Gunter* v. *Gunter*, 23 Beav. 571)

MINES.

1. Succession Duty thereon calculated upon the average profits or income, or upon an annual value arrived at by taking 3 per cent. upon the ascertained principal value (s. 26 of 16 & 17 Vict. c. 51).
2. Dower is due of mines wrought during the coverture; but not of unopened mines.

Mines and minerals pass with the land without special mention, and if they are to be excepted from the grant an express reservation of them must be made, except:

(*a*) In the enfranchisement of copyholds the lord retains the minerals in the absence of writing by him to the contrary (15 & 16 Vict. c. 51, s. 48; 21 & 22 Vict. c. 94, s. 14).

(*b*) Purchases by railway companies under the Railway Clauses Act (8 & 9 Vict. c. 20, s. 77).

A tenant-for-life impeachable for waste is not entitled to the profits of mines not opened till after the testator's death (*Campbell* v. *Wardlaw*, 8 App. C. 641).

But he may open a new pit with a view to the more profitable working of a mine opened before the death of the testator.

He is also entitled to profits of mines opened under powers conferred by the testator, or agreed to be leased by the testator, though the mines are not opened or the leases actually granted till after testator's death.

A tenant-for-life is empowered to grant a mining lease by the Settled Land Act, 1882 (s. 11).

MINORS AND MINORITY.

1. Minority *primâ facie* means the period before the attainment of 21; but it may have a more extended meaning (*Milroy* v. *Milroy*, 14 Sim. 48).
2. Every minor comes of age on the day preceding the twenty-first anniversary of his birthday, and may act as of full age the first moment of that day.

See also "Infant;" "Payment into Court."

3. Where a legacy is bequeathed to an infant, though a stranger, with maintenance during minority, interest is payable from the testator's death (*Newman* v. *Bateson*, 3 Sw. 689).
4. As to gift of rents and profits to a parent during the minority of a child, where the child dies during the minority, see "Annuity."
5. As to portions charged on land, and payable on children attaining 21, see "Portions."

MISAPPROPRIATION OF DUTY.

Any person receiving money for the duty upon any legacy or residue is accountable for the amount as a debt due to the Crown (13 & 14 Vict. c. 97, s. 8); and money received as and for Legacy Duty cannot be returned to the executor or appropriated to any other purpose (*Attorney-General* v. *Wenham*, Ex. Jan. 12, 1869, MS. cited at p. 399 of Hanson's "Death Duties," 4th ed.).

A legatee having paid the duty to the agent of the executor (and misappropriated by him), the executor cannot afterwards recover it from the legatee (*Horne* v. *Coleman*, 26 L. J. R. (Ch.) 213).

MISTAKE IN PAYMENT OF DUTY. See "Rectification of Duty."

MIXED FUNDS (Forms No. 11, No. 12, and composite Form No. 3).

1. Real estate and personal estate are given together, subject to charges, debts, legacies, etc., the real estate being directed to be sold.

MIXED FUNDS—*continued.*

Here the charges are payable, *pari passu*, out of the real estate and personal estate in proportion to their respective values (*Roberts* v. *Walker*, 1 R. & M. 752; *Stocker* v. *Harbin*, 3 Beav. 479; *Salt* v. *Chattaway*, 3 Beav. 576).

"When a testator creates from real and personal estate a mixed and general fund, and directs the whole of that fund to be applied for certain purposes, he does in effect direct that the real and personal estate which have been converted into that fund shall answer the stated purposes, and every one of them *pro rata*, according to their respective values" (*per* Sir John Leach, M.R., in *Roberts* v. *Walker*, *sup.*).

2. Where, however, the real estate is NOT directed to be sold, the personal estate will not be exonerated from its primary liability to the charges (*Boughton* v. *Boughton*, 1 H. L. 406; *Tench* v. *Cheese*, 6 D. M. & G. 453).

3. But where there is a discretionary power to the trustees to sell as often as they should think fit, the legacies directed to be paid out of the real estate and personal estate are payable *pro rata*.

"It was long ago settled that where a testator was minded, in addition to his personal estate, to make his real estate assets for the payment of debts and legacies, or either of them, the presumption is that the real estate was made an auxiliary fund secondarily liable only to the personal estate, which still retained its primary liability. That being so, it was held that it was absolutely necessary not only to have an expression of oneration of the real estate, but a sufficient expression of exoneration of the personal estate, either wholly or partially, before there could be any interference with the ordinary rule for the application of assets.

"At first it seems to have been thought that was to be evidenced by actual expression of oneration and exoneration, but in a series of cases, of which the case of *Bootle* v. *Blundell*, 1 Mer. 193, is a sufficient instance, it was held that you might in that case, as in any other case for this purpose, as well as for other purposes, look at the whole contents of the will; and if, upon an interpretation of the will, according to the ordinary principles of legal construction, the Court arrived at a judicial conviction that there was an intention on testator's part, not merely that the real estate should be onerated, but that it should be onerated in partial or total exoneration of the personal estate, the Court was bound to give effect to that intention" (*per* Sir W. M. James, L.J., in *Allan* v. *Gott*, 7 Ch. 439).

4. Where real estate is directed to be sold and to form part of the personalty, it is thereby subject to all charges affecting the personal estate (*Bright* v. *Larcher*, 3 De G. & J. 148).

However, a gift of personal estate and converted realty together will not have the effect of making legacies given *simpliciter* a charge on the real estate.

5. **Rule in Greville *v.* Browne, 7 H. L. 689.**

Where legacies are given *simpliciter*, and the gift thereof is followed by a gift of the **residuary real estate** (whether or not directed to be sold) and **personal estate together**, the legacies are charged upon the entire RESIDUE.

The rule applies (*a*) where real estate is enumerated in the residuary devise; (*b*) to the case of a legacy given by codicil as an addition to one given by will; (*c*) notwithstanding that interests in land have already been devised; (*d*) whether the gift of residue follows or precedes the gift of legacies.

But the gift of the real estate must be **residuary**, and it must be given **together with** (and not separately from) the real estate; such a gift, however, though it charges the legacies on the entire residue, does not, in the absence of a direction to pay the (debts and) legacies out of the mixed fund exonerate the

MIXED FUNDS—*continued.*

personalty from its primary liability (*Elliott* v. *Dearsley*; *Luckcraft* v. *Pridham*, *infra*). See Hawkins on Wills, and Theobald (4th ed.) on Wills.

Where, however, legacies are not given *simpliciter*, but directed to be paid out of a fund derived exclusively from personalty, the above rule does not apply (*Gyett* v. *Williams*, 2 Jo. & H. 429).

A testator by will, made in 1866, after specifically disposing of certain property, and giving certain real estate to his widow for life or widowhood, gave the rest and residue of his real estate and personal estate to trustees upon trust to convert the same into money, and thereout pay his debts including debts due on mortgage of the property given to his wife during widowhood, and his funeral and testamentary expenses, and the costs of proving and executing his will. The income of the fund was bequeathed to the wife for life or widowhood, and after her death or second marriage the testator gave so much of the fund as consisted of pure personalty to charities, and the rest to his wife. In a subsequent part of the will he appointed executors and gave a legacy to each of them who accepted the trusts. At his death part of the residuary personal estate was subject to mortgages (**Elliott *v.* Dearsley, 16 Ch. D. 322**).

Held, that the legacies were charged on the real estate but only in aid of the personal estate, the principle of *pro rata* payment only applying to payments which the testator had expressly directed to be made out of the MIXED FUND. It was also held that the will did not indicate any such "contrary intention" as to exclude the mortgages on the residuary real estate from the operation of Locke King's Act, and that they must be paid out of the proceeds of the mortgaged estate.

Dictum of James, L.J.

"As regards the legacies I cannot follow Mr. Rigby's argument, that whenever real estate and personal estate are thrown together into a mixed fund everything payable out of them is to be thrown upon them rateably. I remember that *Roberts* v. *Walker* was considered at the time to go beyond any case that had previously been decided; but that case went no further than this, that where a testator made a mixed fund out of which he directed certain things to be paid, then, to the extent of the things so mentioned, the payment was to be made rateably out of the different parts of the fund. If the testator had only directed legacies to be paid out of the fund they must be paid rateably, but that would not make debts be payable rateably out of the real estate and personal estate; **the rule of rateable payment does not extend beyond the things which the testator has expressly directed to be paid out of the fund.** Here the legacies are no doubt charged on the real estate by the force of the word 'residue'; but there is no direction to pay them out of the mixed fund. There is therefore nothing to disturb the ordinary rule that they are primarily payable out of the personal estate."

Here it was held that where a testator creates for purposes of disposition a MIXED FUND of the proceeds of realty directed to be converted and personalty, the personalty is not exempted from its primary liability to debts, etc., unless they are directed expressly or by necessary implication to be paid out of the MIXED FUND. The mere fact that the will contains a constructive charge of debts upon the real estate will not amount to such a direction (*Simmons* v. *Rose*, 6 D. M. & G. 411, explained; **Luckcraft *v.* Pridham, 48 L. J. Ch. 636**).

See also **In re Boards; Knight** *v.* **Knight**, W. N. (1895) 15; 43 W. R. 472.

MIXED FUNDS—*continued.*

Examples.

1. Testator left personal estate (English £1000, net (*a*): foreign £500, net), and bequeathed £200 to son A. and residue to his widow.
   Here the English personal estate : foreign personal estate : : 2 : 1.
   Therefore, although the proportion, viz. two-thirds, payable out of English personal estate is exempt from Legacy Duty (s. 41 of 44 Vict. c. 12), the one-third payable out of foreign personal estate will be chargeable with Legacy Duty at the rate of 1 per cent. For the executors cannot be allowed to marshal the assets to the prejudice of the Revenue and pay the legacy wholly out of that part of the assets exempt from Legacy Duty, so as to unduly diminish or defeat the claim of the Crown.
2. Testator directed his real estate and personal estate to be sold, and out of the proceeds £600 to be paid to his son A., and the residue to be equally divided among the children.
   Here, inasmuch as all the beneficiaries are liable to the same rate of duty and take immediately, an apportionment for the purpose of duty is not insisted on, and duty can be offered on Form No. 8 (in duplicate), the names of all the beneficiaries being included in the "Declaration."
3. Where, in Example 2, the residue is given to the wife (either for life or other limited interest or absolutely) an apportionment will be necessary.
4. Testator directed his real estate and personal estate to be sold, and out of the proceeds £800 to be paid (duty free) to A. and the residue to Z.
   Here, as Z. has to pay all the duty, an apportionment is not strictly necessary. In practice it is found that accounting parties prefer to pay Legacy Duty on Form No. 1, and to waive the slight advantage obtained, by an apportionment, of an increased deduction of duty. See "Free of Duty, Gifts."
5. Testator directed his real estate and personal estate to be sold, and out of the proceeds £20 to be paid to A., £500 to B., and the residue to C.
   The real estate (£500, net) : personal estate (£200, net) : : 5 : 2.
   Here, therefore, 5/7ths is the proportion attributable to the real estate, and 2/7ths is the proportion of the legacies attributable to the personal estate (Form No. 11). A., therefore, pays duty at the rate of 1½ per cent. on £14 5*s.* 9*d.*, but is exempt as to the personal estate (s. 41 of 44 Vict. c. 12) if consisting of English and not foreign personal estate.
   B. pays at the rate of 4½ per cent. on £357 2*s.* 11*d.*, and at the rate of 3 per cent. on the remainder, viz. £142 17*s.* 1*d.* For apportionment of residue, see Example 10.
6. Testator directed his real estate and personal estate to be sold, and out of the proceeds an annuity of £39 to be paid to A. (aged 40 at the death) and the residue to B.
   Real estate (£5000, net) : personal estate (£1500, net) : : 10 : 3.
   Here, therefore, 10/13ths and 3/13ths are the proportions of the annuity which respectively fall to be paid out of the real estate and personal estate (Form No. 12). The value of an annuity of £39 for a life aged 40 is £580 2*s.* 6*d.* A., therefore, pays at the rate of 4½ per cent. on £446 5*s.*,

(*a*) The net values are taken, for, as regards the personal estate, debts payable to persons resident in this country are properly payable out of personal assets here, notwithstanding testator has created a mixed fund for their payment (see *Percival's Executors* v. *The Queen*, 3 Hurlst. & Colt. 217), and, as regards the real estate, the costs of sale directed by the will are properly payable out of the proceeds thereof.

MIXED FUNDS—*continued.*

and at the rate of 3 per cent. on £133 17*s.* 6*d.* See Example 10 as to apportionment of residue.

7. If, in Example 6, the testator, after making certain specific bequests amounting to £450 in value, had directed his real estate and the residue of his personal estate to be sold and the annuity to be paid out of the proceeds thereof, the ratio would have been £5000 : £1500 – £450, *i.e.* 5000 : 1050 or 100 : 21.

8. Testator directed his real estate and personal estate to be sold, and out of the proceeds £260 to be paid to A. (son), £520 to B. (sister), £780 to C. (a charity), and the residue (*vide* Example 10) to the children.

Real estate (£5000, net) : English personal estate (£1500, net) : foreign personal estate (£1300, net) : : 50 : 15 : 13.

Here, therefore, 50/78ths, 15/78ths, 13/78ths, are the proportions of the legacies which respectively fall to be paid out of the real estate, English personal estate, and foreign personal estate.

A. pays at the rate of 1½ per cent. on £166 13*s.* 4*d.* (50/78ths of £260).
And „ „ 1 „ „ £43 6*s.* 8*d.* (13/78ths of £260).

No duty is payable on the proportion attributable to English personalty (s. 41 of 44 Vict. c. 12).

B. pays at the rate of 4½ per cent. on £333 6*s.* 8*d.* (50/78ths of £520).
And „ „ 3 „ „ £186 13*s.* 4*d.* (15/78ths + 13/78ths of £520).

C. pays at the rate of 10 per cent. on £280 (28/78ths of £780), the proportion falling to be paid out of the real estate being void; not so, however, where testator died on or after Aug. 5, 1891, see "Charities, Gifts to."

9. If in Example 8, the real estate (net) had consisted of English real estate (£4000), and foreign real estate (£1000), the ratio would have been—

4000 : 1000 : 1500 : 1300, *i.e.* 40 : 10 : 15 : 13.

The apportionment as to the personal estate would not be affected; but, as regards the real estate, the proportions of the legacies to A. and B. which fall to be paid out of foreign real estate (*viz.* 10/78ths of £520 and £260), are not chargeable with duty, for property of an *immoveable* nature (*e.g.* lands or chattels real) situate in a foreign country is exempt from duty, notwithstanding that the owner dies domiciled in this country. And this exemption extends to charges thereon, and to the proceeds of sale of such property directed by the will to be sold.

10. To apportion the net *residue*, as shown on p. 3 of the Residuary Account, so as to ascertain the proportion thereof representing real estate, the proportion representing personal estate being, of course, the remainder of such net residue.

	£	*s.*	*d.*
NET RESIDUE (say)	8765	15	4
Real estate (net)	6754	13	4
Accretions (net) of real estate, to date of residuary account if real estate unsold; or to date of sale, if sold	156	6	8
TOTAL ..	£6911	0	0

MIXED FUNDS—*continued.*

	£	*s.*	*d.*
Deductions to be taken from this total :—			
1. Proportion of legacies (amounting to, say, £1200) falling to be paid out of the real estate (say)	450	0	0
2. Proportion of probate and general testamentary expenses falling to be paid out of the real estate (say) ..	210	0	0
TOTAL DEDUCTIONS ..	£660	0	0

The proportion of net residue (£8765 15*s.* 4*d.*) representing real estate is £6911 – £660, *i.e.* £6251. The proportion representing personal estate is, of course, the remainder, *viz.* £2514 15*s.* 4*d.*

Estate Duty.

A., who dies before Aug. 2, 1894, by his will gives the income of a capital sum, which he directs to be set apart out of a mixed fund, comprised of the proceeds of sale of his real and personal estate (English and foreign) to B. for life, and then over.

On the death of B., after Aug. 1, 1894, Estate Duty is payable on the proportion of the fund, so set apart, which is attributable to the proceeds of realty, and to the foreign assets, neither of which were liable to Probate Duty. The proportion of the fund so passing liable to Estate Duty is determined by the ratio which the real estate or foreign personalty, as the case may be, bears to the whole of the mixed fund at the death of A.

MODUS.

A modus is a composition for tithes which has existed from time immemorial.

MONEY.

1. No claim is made for duty in respect of money raised by voluntary subscription.

Money arising from the sale of land; money directed to be invested in the purchase of land; when liable to Legacy Duty, and when to Succession Duty, see "Conversion."

Money belonging to a testator which remains charged on his own real estate, is liable to Legacy and Probate Duty (*Swabey* v. *Swabey*, 15 Sim. 302).

Money charged by will on real estate, either by the donee in pursuance of a general power, or by the owner, is not liable to Probate Duty.

Money left to pay Legacy Duty is exempt from duty; not so money left to pay Succession Duty. See "Free of Duty, Gifts."

"Money payable under any engagement" (*Lord-Advocate* v. *Roberts's Trustees*, 20 Sco. Sess. C. A. 2nd Ser. 449), and "money secured on heritable property in Scotland," are included in the term "personal property," for the purposes of the Succession Duty Act (16 & 17 Vict. c. 51, s. 1).

Money which a deceased person dying after Aug. 1, 1894, had a general power to charge on real property, whether he did or did not exercise the power, is liable to Estate Duty (Finance Act, 1894, ss. 2 (1*a*), 22 (2*c*)).

As to money which the deceased had a special power to charge on real property, see "Jointure Rent Charge;" "Portions."

2. "Money" in a will includes notes payable to bearer, exchequer bills, bills of exchange indorsed in blank, bank notes, money at a bank on a current account, as well as on deposit, and any money of which the testator, at the time of his death, might have claimed immediate payment; but not choses in action, such

MONEY—*continued.*

as government securities, promissory notes not payable to bearer, or stock in the funds, unless its meaning is enlarged by the context, or the testator has, at the date of the will and of his death, no money properly so called (*Chapman* v. *Reynolds*, 28 Beav. 221). Sometimes, however, money is construed in a large sense as meaning the residuary personal estate (*Stocks* v. *Barré*, Johns. 54; *Montague* v. *Earl of Sandwich*, 33 Beav. 324; *In re Cadogan*, 25 Ch. D. 154).

"Ready money" includes cash in the house, and money in a bank payable on demand; but not notes of hand, promissory notes, or debts due to testator (*Powell's Trust*, Jo. 49).

"Securities for money" will pass bills of exchange, or promissory notes, bonds and mortgage debts (where the right to receive which is in the testator), and stock in the funds, but it will not pass an account current at a bank, or on deposit there, I. O. U.'s, shares, bank stock, mere debts, or a lien for unpaid purchase-money.

3. S. 71 of 3 & 4 Will. 4, c. 74, enacts that lands directed to be sold, where the purchase-money is subject to be invested in the purchase of lands to be entailed, and money subject to be invested in a similar purchase, are to be treated as the lands to be purchased.

Where money, representing entailed land, is in Court, and the matter is at all complicated, as by lunacy, or the creation of a base fee, the money will not be paid out of Court without the execution of a disentailing deed, or a deed enlarging the base fee (*Re Butler's Will*, 16 Eq. 479; *Re Broadwood's Settled Estates*, 1 Ch. D. 438; *Re Reynolds*, 24 W. R. 991).

"MONEY OR MONEY'S WORTH," valuable consideration in, see "Consideration."

MONUMENT.

A bequest of money in trust to keep up the tomb of testator and his family is void as being a perpetuity (*Rickard* v. *Robson*, 31 Beav. 244).

A bequest in trust to keep in repair a monument within the church is good (*Hoare* v. *Osborne*, L. R. 1 Eq. 585).

The cost of a monument is not allowed as a deduction against Estate Duty, Probate Duty, or even as against Legacy Duty, unless testator has by his will directed the same to be erected, and then only if it has been in fact erected. The amount allowed is determined by the circumstances of each case.

No Legacy Duty, however, is payable on a sum so expended.

MORTGAGE.

1. The fund primarily liable to pay a mortgage debt is since 17 & 18 Vict. c. 113, the mortgaged estate itself, unless a contrary intention is manifest: see "Locke King's Act."

The surplus proceeds on sale of mortgaged property by the mortgagee, after the death of the mortgagor, pass as realty to the real representatives of the mortgagor (*Wright* v. *Rose*, 2 Sim. & St. 323), see "Conversion."

Mortgaged estates now devolve on the personal representatives of the deceased mortgagee (Conveyancing Act, 1881, s. 30).

Where two persons advance money by way of mortgage and take the mortgage to them jointly, on the death of one his representative takes his proportion, there being no survivorship as to the mortgage money.

MORTGAGE—*continued.*

As to time within which mortgagor may redeem, see "Limitations."

The locality of a mortgage debt is not governed by the situation of the property comprised in the mortgage, and therefore, Probate Duty is payable in respect thereof, where due to the deceased creditor from a person resident in the United Kingdom. And see *Re Lawson* (1896) 2 I. R. 418.

Where mortgage debt paid off by tenant-for-life, tenant-in-tail, etc., is, or is not held to be extinguished, see "Merger."

Where trust money is lent on mortgage it is found expedient to keep the trust out of sight, so that when the money is paid off the trust deed may not become an essential link in the mortgagor's title.

And where trust money is lent on mortgage by trustees A. and B., and A. dies having appointed C. his executor, then if the mortgage was prior to Jan. 1, 1882, B. cannot give a valid receipt for the debt and reconvey the estate; for in equity the mortgagees are tenants in common; and C. must join in the reconveyance to discharge the debt. B., however, could give a valid receipt provided the deed contained a declaration that the money was advanced by A. and B. on a joint account.

In mortgages executed after Dec. 31, 1881, the joint account clause, and the power for the survivor to give a receipt for the money are rendered unnecessary by 44 & 45 Vict. c. 41, s. 61.

A conveyance with an option to repurchase must be distinguished from a mortgage. In the former case should the purchaser die seized, and then the right to repurchase be exercised, the money will go to the purchaser's real representative, and not, as in the case of a mortgage debt, to the personal representatives (*Thornborough* v. *Baker*, 2 L. C. 1046).

Mortgage securities may be said to rank in value as follows:—

Freehold land in fee simple.
Freehold house property in fee simple.
Copyholds.
Long terms, free from burdensome covenants and heavy ground rents.
Freeholds held in fee simple, but used for trade purposes.
Estates for life in land.
Reversions and remainders.
Life assurance policies (generally taken in conjunction with mortgages of estates for life in land).
Personal chattels.

A tenant-for-life can mortgage the fee where money is required (*a*) for enfranchisement, or for equality of exchange or partition (Settled Land Act, 1882 (ss. 18, 20)), (*b*) for discharging an incumbrance on the settled estate (Settled Land Act, 1890 (s. 11)), the money raised being paid to the trustees or into Court.

An executor can mortgage the fee where—

(*a*) devised to him charged with debts;
(*b*) charged with debts or legacies in cases within 22 & 23 Vict. c. 35, s. 16;
(*c*) **estate duty** payable, and the executor pays the duty at the request of the accountable parties (Finance Act, 1894 (ss. 6, 9).

A trustee can mortgage the fee where—

(*a*) an estate is devised to him charged with debts or legacies, without any provision for raising the same (22 & 23 Vict. c. 35, s. 14);
(*b*) **estate duty** payable (Finance Act, 1894 (s. 9)).

MORTGAGE—*continued.*

2. **Deduction against Probate Duty and Legacy Duty.**

Mortgage debts cannot be deducted in the affidavit leading to the grant (44 Vict. c. 12, s. 28) where (*a*) created by deceased, the mortgaged estate itself being, under Locke King's Act, primarily liable; (*b*) not created by deceased, the real estate being acquired by the deceased subject to the mortgage. Mortgage debts can, however, be deducted from the saleable value of leaseholds included in the affidavit (31 & 32 Vict. c. 124, s. 7).

Where the residuary legatee and the devisee of the realty (or the heir-at-law and the sole next-of-kin) are the same person, he may elect to pay the mortgage debt out of whichever fund he may think proper, and where thus deducted against Probate Duty may also be deducted against Legacy Duty.

3. **Deduction against Succession Duty.**

No allowance for mortgage debt created by expectant successor (**Re Peyton**, 7 Hurlst. & Norm. 265).

Mortgagee of an expectant succession is not an alienee within s. 15 of 16 & 17 Vict. c. 51; otherwise where he forecloses, in which event he is liable for the Succession Duty.

4. **Deduction against Estate Duty.**

A deduction against Estate Duty; but where incurred or created by the deceased, it must (to be allowed as a deduction) be "incurred or created *bonâ fide* for full consideration in money or money's worth wholly for the deceased's own use and benefit, and take effect out of his interest (Finance Act, 1894, s. 7 (1 a)).

Mortgage by remainderman.

A. (tenant-for-life) dies after the Finance Act, 1894. B. remainderman in fee.

1. B., who takes in remainder, in the lifetime of A. mortgages his remainder. The mortgage cannot be deducted against the Estate Duty payable on the real estate on A.'s death.
2. Where B. sold his reversion, so mortgaged, to C., and died before A., C., on succeeding on A.'s death, cannot deduct the mortgage.

Liability.

B. and the mortgagees, to the extent of their incumbrances (s. 8 (4)), are liable for the Estate Duty; and where the incumbrances were created prior to Aug. 2, 1894, the mortgagees would only be liable to pay the lower rate of duty referred to in s. 21 (3), and B.'s liability would be the same as if no incumbrance had been created. See also "Estate Duty," Example VI.

3. Where A., tenant-for-life, and B., tenant-in-tail, in the exercise of a joint power of appointment, appoint the property by way of mortgage to C. Then against the Estate Duty payable on A.'s death, the whole of the mortgage debt (including the part thereof applied for the benefit of B.) can be deducted. See "Cowley Case." An appeal to the House of Lords is pending in this case.

"The benefit accruing from the passing of the property was no more than the capitalized value of the income which A. had actually had a right to enjoy. In other words it was the value of the income to which the equity of redemption of the life estate of A. extended." Per Bruce, J., in this case.

Relief of mortgagee from liability to Succession Duty. See "Limitations."

MORTIS CAUSÂ, GIFTS. See "Donatio Mortis Causâ."

MORTMAIN.

1. All gifts by will of realty, and of whatever savours of realty (for example, interests in land, charges upon land, money to be laid out in land, or in interests in land, or in charges upon land), to charitable purposes, are void by the Statute of Mortmain (9 Geo. 2, c. 36).
2. Examples of gifts to charities which have been held to be void as savouring of realty :—
   - Moneys to arise from the sale of land (*Pape* v. *Leapingwell*, 18 Ves. 463).
   - Rents and profits of land to accrue due (*Thornber* v. *Wilson*, 3 Drew, 245).
   - Money to be laid out in building a school, the necessary land not being already in mortmain (*Chapman* v. *Brown*, 6 Ves. 404).
   - Money to be laid out at interest on mortgage.
   - Vendor's lien for unpaid purchase-money (*Harrison* v. *Harrison*, 1 R. & M. 71).
   - Lien for unpaid premium for lease (*Shepheard* v. *Beetham*, 6 Ch. D. 597).
   - Leaseholds (*Johnston* v. *Swann*, 3 Mad. 457).
   - Mortgage debts secured on freeholds, copyholds, or leaseholds, including equitable mortgages (*Attorney-General* v. *Meyrick*, 2 Ves. Sen. 44; *Attorney-General* v. *Caldwell*, Amb. 635; *Chester* v. *Chester*, 12 Eq. 444).
   - Money to pay off a debt upon land already in mortmain (*Corbyn* v. *French*, 4 Ves. 418).
   - Arrears of interest on a mortgage of land, due but unpaid at the creditor's death (*Alexander* v. *Brame*, 30 Beav. 153).
   - Charges on land (*Attorney-General* v. *Harley*, 5 Mad. 321).
   - Land impressed with a trust for conversion, where, at the death of the testator, the time for selling the land has not arrived, or where the testator can elect to take the land in its existing state (*Brook* v. *Badley*, L. R. 3 Ch. 572; *Lucas* v. *Jones*, L. R. 4 Eq. 73).
   - Real estate forming part of the assets of a partnership (*Ashworth* v. *Munn*, 15 Ch. D. 363).
   - Emblements (*Symonds* v. *The Marine Society*, 2 Giff. 325).
   - Money to be invested in real securities (*Baker* v. *Sutton*, 1 Kee. 224).
   - As to shares in companies, see Tyssen's "Law of Charitable Bequests."
3. Examples of gifts to charities which have been held to be valid :—
   - Bequests of arrears of rent, or of the apportioned part of rent at testator's death (*Edwards* v. *Hall*, 6 De G. M. & G. 74; *Thomas* v. *Howell*, 18 Eq. 198).
   - Bequest of a policy of assurance, although the assets of the company consist of realty (*March* v. *Attorney-General*, 5 Beav. 433).
   - Bequest for the endowment of an existing church (*Edwards* v. *Hall*, *supra*).
   - Bequest of money for the erection of buildings on land already in mortmain (*Attorney-General* v. *Munby*, 1 Mer. 327).
   - Bequest of an annual sum to establish a school for the education of poor children (*Braund* v. *Earl of Devon*, L. R. 3 Ch. 800).
   - When it is discretionary and not compulsory for the trustees to invest in realty (*Beaumont's Trusts*, 32 Beav. 191).
4. Institutions to which Mortmain Acts do not apply :—
   - The Universities of Oxford and Cambridge, London, Durham, and the Victoria University, and any of their colleges; the colleges of Eton, Winchester, Westminster, and Keble College.

MORTMAIN—*continued.*

The Foundling Hospital (17 Geo. 2, c. 29); Greenwich Hospital (10 Geo. 4, c. 25); St. George's Hospital (4 Will. 4, c. 38); The British Museum (26 Geo. 2, c. 22; 5 Geo. 4, c. 39); The Marine Society (12 Geo. 3, c. 67); The Bath Infirmary (19 Geo. 3, c. 23); Queen Anne's Bounty (43 Geo. 3, c. 108); The Royal Naval Asylum (51 Geo. 3, c. 105); Seamen's Hospital Society (3 & 4 Will. 4, c. 9); Ecclesiastical Commissioners, in respect of gifts, etc., for endowment of clergy, or building or repairing churches (14 & 15 Vict. c. 97).

5. As to the provisions of the Mortmain and Charitable Uses Act of 1888, and the amending Act of 1891 (which latter Act only applies to wills of testators dying after Aug. 5, 1891), see "Charities, Gifts to."
6. As to Liability to **Legacy Duty** and **Succession Duty** of charitable gifts, see "Charities, Gifts to."

MOTHER.

As to exemption from Legacy Duty or Succession Duty, see "Lineals."

Where a child dies intestate without a wife, child, or father, the mother is entitled to administration, and under 1 Jac. 2, c. 17, takes an equal share with every brother and sister.

Where, however, the deceased child left neither wife nor child, nor father, and there be neither brother or sister, nor nephew or niece, the mother takes the whole of the intestate's effects.

MOTHER-IN-LAW.

Pays 10 per cent. Legacy Duty, or 10 or 11½ per cent. Succession Duty as the mother of the wife (or husband) of the deceased, unless the wife and husband were (*e.g.* as first cousins) related by blood, when a lower rate (*e.g.* 5 per cent.) might become payable.

MOURNING.

Not a deduction against Probate Duty, or Estate Duty, not being a "reasonable funeral expense according to law" (44 Vict. c. 12, s. 28).

MUTUAL WILLS. See "Joint Wills."

N.

NATAL—

Date of Order in Council (Finance Act, 1894), July 16, 1895.

No Death Duty leviable.

NATION, GIFTS TO.

The Treasury may remit the duty on such pictures, prints, books, manuscripts, works of Art, or scientific collections, as appear to them of **national**, scientific, or historic interest, and **given for national purposes**, or to any University, or to any County Council or Municipal Corporation (Finance Act, 1894, s. 15 (2)).

NATIONAL INTEREST, OBJECTS OF.

Objects of **national**, scientific, or historic interest, admitted by the Treasury to be such, passing on a death on or after July 1, 1896, and settled so as to be

NATIONAL INTEREST, OBJECTS OF—*continued.*

enjoyed in succession in kind only, are not to be charged with Estate Duty until they are actually sold, or are in the possession of some person competent to dispose of them (Finance Act, 1896, s. 20 (1)).

Example.

A testator dies July 2, 1896, and bequeaths his library and pictures (which, on application by the accountable persons, the Lords of the Treasury have certified to be of national, scientific, or historic interest) to B. for life, and on his death to C. absolutely.

Value of library and pictures, £24,000.

Value of other property (aggregable) passing on the testator's death, £52,000.

Estate Duty is, in practice, treated as payable only on £52,000 at 5 per cent., and on B.'s death, on £24,000, or whatever may then be the value of the library and pictures, at 4 per cent., as an "estate by itself." Cf. 36 Geo. 3, c. 52, s. 14; Finance Act, 1894, s. 15 (2).

NAVY PAY.

Arrears of, not exceeding £100, standing to the credit of any deceased officer, seaman, or marine in the books of the Admiralty, may be paid to the persons entitled to take out representation without requiring a grant of probate (28 & 29 Vict. c. 111).

NECESSARY OUTGOINGS.

In estimating the annual value of property yielding income not of a fluctuating character an allowance is made for all "necessary outgoings" (s. 22 of 16 & 17 Vict. c. 51).

"Necessary outgoings" do not include income tax, expenses of management, such as salary of a steward, or cost of collecting rents (*In re Elwes*, 3 Hurlst. & Norm. 719; *In re Earl Cowley*, L. R. 1 Ex. 288).

"Necessary outgoings would appear to be PERMANENT charges made on the occupiers of the land or falling entirely on the land, such as repairs, poor rates, highway, sewer and county rates, town rates, drainage rates and the like; some of which may be payable occasionally, still they are permanent charges, and capable of valuation, so as to render it possible to calculate the annual amount" (per Watson, B.: *Re Elwes* (*supra*), at p. 726).

"The term 'necessary outgoings' means not all such outgoings as the predecessor may have thought proper to expend, but all such as are *intrinsically necessary*, such outgoings as it was not in the option of the predecessor to expend or not as he pleased" (per Bramwell, B., Law Rep. 1 Ex. 294. *In re Earl Cowley* (*supra*)).

NEPHEW AND NIECE.

Share with uncles and aunts in the distribution of the effects of a deceased intestate. They take *per capita* where all the intestate's brothers and sisters were, at the time of his decease, dead; *per stirpes*, by way of representation, where some of the brothers and sisters survive, and some die, leaving children.

Are chargeable to **Legacy Duty** at the rate of 3 per cent. (55 Geo. 3, c. 184, Sch. Part III.); and to **Succession Duty** at the rates of 3 per cent. (16 & 17 Vict. c. 51, s. 10), and 4½ per cent. (51 Vict. c. 8, s. 21).

The legatee or successor should not be described as "nephew" or "niece," but as "descendant of a brother" or "descendant of a sister," as the case may be.

A gift by will to nephews or nieces means *primâ facie* to the children of a brother

NEPHEW AND NIECE—*continued.*

or sister, including those of the half-blood; but the wife's nephews and nieces will take under this designation, if at the date of the will and at the testator's death he has no nephews and nieces of his own: and they may take by name and under the description of nephews and nieces where it appears from the circumstances that they were intended to take, even though there be nephews and nieces of the testator himself of the same name (*Hogg* v. *Cook*, 32 Beav. 641; *Grant* v. *Grant*, L. R. 1 P. & D. 654).

Great-nephews and great-nieces will be included where the intention is evident (*Re Blower*, 19 W. R. 666).

NEW BRUNSWICK.

Date of Order in Council (Finance Act, 1894), Feb. 26, 1897.

Death Duty Acts: "The Succession Duty Act, 1892" (55 Vict. c. 6); "An Act in addition to, and in amendment of, the Succession Duty Act, 1892" (56 Vict. c. 15); "An Act to further amend the Succession Duty Act, 1892" (57 Vict. c. 6).

The duty is a Succession Duty on all property situate within the Province (or elsewhere in the case of an inhabitant of the Province).

Exemptions.

1. Any estate the value of which, after paying all debts and expenses of administration, does not exceed 5000 dols.
2. Property given, devised or bequeathed for religious, charitable, or educational purposes.
3. Property passing under a Will, intestacy or otherwise, to or for the use of the father, mother, husband, wife, child, daughter-in-law, or son-in-law of the deceased, when the aggregate value of the property of the deceased does not exceed 50,000 dols. in value; and
4. Where the whole of any property devised, bequeathed, or passing to any person under a Will or intestacy does not exceed 200 dols., the same is exempt from duty.

SCALE.

Value of Property Liable to Duty.	Rate of Duty per cent.
(*a*) When deceased's property passes, either in whole or in part, to or for the benefit of the father, mother, husband, wife, child, brother, sister, daughter-in-law, or son-in-law of the deceased, the same, or so much thereof as so passes, shall be subject—	
Where the aggregate value of the property of the deceased exceeds 50,000 dols.	1¼ on the first 50,000 dols., 2½ on remainder.
Ditto ditto 200,000 dols. ..	5
(*b*) Where the property of the deceased exceeds 10,000 dols., so much thereof as passes to or for the benefit of the grandfather or grandmother of the deceased, or any other lineal ancestor of the deceased, except the father or mother, or any descendant of a brother or sister of the deceased, or to any brother or sister of a father	

NEW BRUNSWICK—*continued*.

	Rate of Duty per cent.
or mother of the deceased, or any descendants of such last-named brother or sister	5
(*c*) Where the property of the deceased exceeds 5000 dols., so much thereof as passes to or for the benefit of any person in any other degree of collateral consanguinity, or to a stranger in blood	10

Where the beneficiary resides out of the Province, the duty payable is at double the above rates.

NEWFOUNDLAND.

Date of Order in Council (Finance Act, 1894), March 8, 1895.

No Death Duty leviable.

NEW RIVER.

Shares (Kings' and Adventurer's shares) in the New River Company are real estate (*Davall* v. *The New River Company*, 3 De G. & S. 394).

NEW SOUTH WALES.

Order in Council not yet applied.

Death Duty imposed by "The Stamp Duties Act, 1880" (44 Vict. No. 3); "The Stamp Duties Act Amendment Act, 1886" (50 Vict. No. 10); "The Stamp Duties Act Further Amendment Act of 1894" (57 Vict. No. 20).

The duty is imposed on the deceased's estate, including his real estate in the Colony; the provisions of the English Act, 44 Vict. c. 12, s. 38, and 52 Vict. c. 7, s. 11, are closely reproduced.

SCALE.

Value of Property (*Real or Personal Estate*) *upon which Duty Payable.*

	Rate of Duty per cent.
Where the value of such estate is under £200	Nil.
Where the value of such estate exceeds £200, and is under £5000	1
Where the value of such estate exceeds £5000, and is under £12,500	2
Where the value of such estate exceeds £12,500, and is under £25,000	3
Where the value of such estate exceeds £25,000, and is under £50,000	4
Where the value of such estate exceeds £50,000	5

NEW SUCCESSION.

S. 15 of the Succession Duty Act, 1853, enacts, *inter alia*, that "where a succession is, before the successor has become entitled in possession, vested by alienation, or by any title **not conferring a new succession**, in any other person, the duty in respect thereof is chargeable at the same rate and time as if no alienation had been made or derivative title created."

"In the case of succession to real estate, the object of the Act is to let the last succession prevail" (per Jessel, M.R., in *Re Cooper and Allen*, 4 Ch. D. 825).

The words "not conferring a new succession" in s. 15 apply to the word "alienation" as well as to the words "any title" (per Jessel, M.R., in this case).

NEW SUCCESSION—*continued.*

Examples.

1. A. is settlor and tenant-for-life and B. (son of A.) remainderman in fee of certain settled real estate. B., while an expectant successor, charges (or empowers A. to charge) portions in favour of A.'s children and an annuity for his widow, to be raised and paid on the death of A.

The children and widow (if liable to duty) pay duty on the death of A. on their **new successions** derived from B. as predecessor, and B. in paying Succession Duty (if liable) on his succession is entitled to a *pro tanto* allowance in respect thereof.

Where, however, B., *quâ expectant successor*, transfers the whole of his interest by deed of gift, sale or mortgage, without carving thereout any new and distinct charge or interest, his original liability (or the liability of those standing in his shoes) is in no way affected. There is but one succession, whereas in the above example there are three successions, the original liability of one (B.) being shared by the three sets of successors, each being liable to the rate attributable to the special relationship borne to the particular predecessor; the settlor being B.'s predecessor, and B. being the predecessor as to the interests carved out of his succession. See *Attorney-General* v. *Floyer* (9 Ho. Lds. Cas. 477); *Re Peyton* (7 Hurlst. & Norm. 265); *Attorney-General* v. *Lord Eustace Cecil* (L. R. 5 Ex. 263).

A. (*ob.* 1831), on the marriage of B. (*ob.* 1855) and C. (daughter of A.), settled a sum of £25,000, navy £5 per cent. annuities (subsequently laid out in the purchase of real estate), upon trust for B. and C. successively for life, with remainder to their issue (none), and in default as C. should appoint.

C. appointed to A., who devised the realty to D.

C. died in 1858.

D. took a succession on C.'s death, derived from A., as predecessor, under his will, it being held that the case did not come within the operation of s. 15, which applied only where the original owner of the reversionary interest was himself chargeable with duty, and that the will must be treated as a disposition within the terms of s. 2, and as conferring a new succession which was chargeable with duty (*Attorney-General* v. *Gardner*, 1 Hurlst. & Colt. 639).

2. If in the above example, the settled property is personal estate, and C., *quâ expectant successor*, assigns his reversionary interest to trustees upon trust for himself for life, remainder to his children, a **new succession** is conferred on the children, and duty will be paid on death of B. under the original disposition, and again on the death of C. by the children under the later disposition of the reversion. And where C. predeceases B., only one duty (that at the highest rate) would be payable (s. 14). See "Littledale Case."

3. If A. and B., in Example (1), join in conveying the real estate to C., who predeceases B., C.'s heir or devisee (D.) pays on a succession derived from C., and at the rate attributable to his relationship to C., the new succession, displacing the original succession. The alienation by A. and B. does not, but the devolution of the property on the death of C. does, create a **new succession** (*Re Cooper and Allen*, 4 Ch. D. 802).

4. If in (1) B. predeceases A., who takes the reversion as heir or devisee of A., the **new succession** on A.'s death will displace the original succession.

But on this subject see "Wolverton Case," and dictum of Lord Herschell.

NEW ZEALAND.

Date of Order in Council (Finance Act, 1894), Feb. 2, 1895.

Death Duty Acts: "The Deceased Persons Estate Duties Act, 1881" (1881, No. 41); "The Charitable Gifts Duties Exemption Act, 1883" (1883, No. 46); "The Deceased Persons Estate Duties Act, 1881, Amendment Act, 1885" (1885, No. 21); "The Deceased Persons Estate Duties Act, 1881, Amendment Act, 1886" (1886, No. 53).

SCALE.

Value of Property Liable to Duty.	Rate of Duty per cent.
Estate under £100	Nil.
„ exceeding £100, but not exceeding £1000	1 on first £100, $2\frac{1}{2}$ on remainder.
„ „ 1000 „ „ 5000	$3\frac{1}{2}$
„ „ 5000 „ „ 20,000	7
„ „ 20,000	10

The duty is imposed on all real and personal property in New Zealand, and is apportioned rateably on the property. The widow is exempt, and one-half the duty is remitted on property passing to children or grandchildren.

Strangers, however, unless they are adopted children, pay an additional rate of 3 per cent.

NEXT-OF-KIN.

Take lapsed shares of residue. See "Lapse."

A gift by will to testator's next-of-kin is taken not by those who would be entitled under the Statutes of Distribution, but by those who, whether of the whole or half-blood, are nearest in degree of personal relationship, so that if there be a brother or sister living the children of a deceased brother or sister will be excluded.

Neither the husband nor the wife will take in a gift to the next-of-kin according to the Statutes of Distribution (*Garrick* v. *Lord Camden*, 14 Ves. 372; *Kilner* v. *Leech*, 10 Beav. 362; *Milne* v. *Gilbart*, 5 De G. M. & G. 510).

In a gift to the next-of-kin of A., the class is ascertained at the testator's death where A. predeceased, and at A.'s death where A. survived the testator, apart from any contrary intention (*Phillips* v. *Evans*, 4 De G. & Sm. 188; *Vaux* v. *Henderson*, 1 J. & W. 388; *Gundry* v. *Pinniger*, 1 De G. M. & G. 502).

The rule applies whether the bequest is immediate or preceded by a life interest (*Moss* v. *Dunlop*, Joh. 490; *Bird* v. *Luckie*, 8 Ha. 301).

NEXT PRESENTATION.

A next presentation, as distinguished from an advowson, is the right to present to a living when it next becomes vacant, and is mere personal property. See also "Advowson;" "Church Patronage."

A gift by will of the next presentation to a living is a legacy out of real estate, and as such will be liable to Legacy Duty (8 & 9 Vict. c. 76, s. 4, which superseded 45 Geo. 3, c. 28, s. 4).

NOMINATION POLICIES. See "Policy."

NOTATION OF DOMICILE.

A. (testator or intestate) dies domiciled in England, and has personal estate in Scotland, or in Scotland and Ireland conjointly. A.'s executor or administrator

NOTATION OF DOMICILE—*continued.*

may obtain a grant for the whole of his effects in the United Kingdom (21 & 22 Vict. c. 56, s. 14).

The affidavit to lead to the grant should state that A. was domiciled in England, and that he was possessed of personal estate in Scotland, the value of which must be separately given. And where there is also personal estate in Ireland, its value should also be given. A memorandum will then be made on the grant and signed by a registrar, that the deceased died domiciled in England (Probate Registry (N. C.) 74). This is called a notation of the deceased's domicile.

When a grant with this notation is produced to the Commissary Court at Edinburgh, and a copy deposited with the clerk, the clerk will indorse a certificate thereon, and the probate being duly stamped, will have the same operation in Scotland as if a confirmation had been granted by the Courts there. A probate granted in England will (on being resealed with the seal of the Irish Court) take effect in Ireland, as if originally granted there, and no notation of domicile is necessary to make the English grant operate there.

If an application be made for a notation of domicile, in order to obtain the recognition of an English grant by a British Consular Court having jurisdiction out of Her Majesty's dominions and authorized by an Order in Council, or otherwise to give effect to such a representation, provided that it bears upon it a statement that the deceased was domiciled in England, the registrars will make an order for such a notation upon evidence of the domicile and the production of a copy of the Order in Council or other authority. See Tristram and Coote's "Probate Practice," 12th ed. p. 282.

NOTICE.

Notice of succession by the persons accountable for the payment of duty (s. 44 of 16 & 17 Vict. c. 51) to be given to the Commissioners (*a*) in the case of personal property at the time "of the first-payment, delivery, retainer, satisfaction, or other discharge of the same or any part thereof to or for the successor or any person in his right," and (*b*) in the case of real property "when any duty in respect thereof shall first become payable" (s. 45).

Nothing in this section shall render liable to or accountable for Estate Duty a *bonâ fide* purchaser for valuable consideration **without notice** (Finance Act, 1894, s. 8 (18)).

S. 3 (1) of the Conveyancing Act, 1882 (45 & 46 Vict. c. 39) enacts that a purchaser shall not be prejudicially affected by notice of any instrument, fact, or thing, unless—

(i.) It is within his own knowledge, or would have come to his knowledge if such inquiries and inspections had been made as ought reasonably to have been made by him; or

(ii.) In the same transaction with respect to which a question of notice to the purchaser arises, it has come to the knowledge of his counsel, as such, or of his solicitor, or other agent, as such, or would have come to the knowledge of his solicitor, or other agent, as such, if such inquiries and inspections had been made as ought reasonably to have been made by the solicitor or other agent.

NOVA SCOTIA.

Order in Council (Finance Act, 1894), Oct. 20, 1898.

Death Duty Act: "The Succession Duty Act, 1895" (58 Vict. c. 8).

NOVA SCOTIA—*continued.*

The duty is a Succession Duty on all property within the control of the executor or administrator, wheresoever situate.

Exemptions.

The Act does not apply—

1. To any estate the value of which, after payment of debts and expenses of Administration, does not exceed 5000 dols.
2. To property passing under a Will, intestacy or otherwise, to or for the benefit of the father, mother, husband, wife, child, grandchild, brother, sister, daughter-in-law, or son-in-law of the deceased, where the value of the property of the deceased, after payment of all debts and expenses of Administration, does not exceed 25,000 dols. in value; and
3. Where the whole value of any property, devised, bequeathed, or passing to any one person, under a Will or intestacy, does not exceed 200 dols., the same shall be exempt from duty.

SCALE.

Value of Property Liable to Duty.	Rate of Duty per cent.
(*a*) Where the property of the deceased passes, either wholly or in part, to or for the benefit of the father, mother, husband, wife, child, grandchild, brother, sister, daughter-in-law, or son-in-law of the deceased, the same, or so much thereof as so passes, shall be subject to—	
Where the aggregate value of the property of the deceased exceeds 25,000 dols.	2½ on the excess above 25,000 dols.
Ditto exceeds 100,000 dols.	5 on the whole amount so passing.
(*b*) Where the property of the deceased exceeds 5000 dols., so much thereof as passes to or for the benefit of the grandfather or grandmother of the deceased, or any other lineal ancestor of the deceased, except the father and mother, or to any descendant of a brother or sister of the deceased, or to a brother or sister of the father or mother of the deceased, or any descendants of such last-named brother or sister ..	5
Any other person in any other degree of collateral consanguinity to the deceased or to a stranger in blood, save as aforesaid	10

NUNCUPATIVE WILLS.

Wills made by word of mouth before two witnesses and afterwards reduced to writing.

Practically abolished by the Statute of Frauds, save as regards wills of soldiers when engaged on an expedition, and wills of sailors at sea. This exception is preserved by 1 Vict. c. 26, s. 11 (WILLS Act).

However, by later legislation, the wills of petty officers and seamen in the royal navy, and of seamen in the merchant service, as far (in either case) as wages,

NUNCUPATIVE WILLS—*continued.*

pay, etc., are concerned, are subjected to certain provisions for the prevention of fraud on their relatives (28 & 29 Vict. c. 72, Merchant Shipping Act, 1894, s. 77).

See also 11 Geo. 4 and Will. 4, c. 20.

O.

OATHS.

By the 52 & 53 Vict. c. 10, which repeals the 16 & 17 Vict. c. 78, commissioners for oaths may be appointed by the Lord Chancellor, who may administer any oath or take any affidavit for the purposes for any court or matter in England.

Under the provisions contained in 13 & 14 Vict. c. 21, s. 4; 44 Vict. c. 12, ss. 33, 34, 39; Revenue Act, 1898 (61 & 62 Vict. c. 46), s. 7 (6), any statutory declaration, affirmation, affidavit, or oath, to be made in pursuance of any Act for the time being in force relating to the duties under the management of the Commissioners of Inland Revenue, may be made before any of such Commissioners or any officer or person authorized by them in that behalf, or before any Commissioner for Oaths, or any Justice, or Notary Public, in any part of the United Kingdom or at any place out of the United Kingdom, before any person duly authorized to administer oaths there.

"Accounts and statements . . . shall be . . . **verified on oath . . .**" (Finance Act, 1894, s. 8 (14)).

OCCUPATION.

Gift of "use and occupation" of testator's house, see "Use and Occupation."

OCCUPATION RENT.

Where testator has directed his executors to sell his real estate and they allow one of their members to occupy buildings at less than a fair occupation rent, they will be chargeable with what would have been a fair occupation rent (*De Cordova* v. *De Cordova*, 4 App. Cas. 692).

OFFICE.

Estate Duty is not leviable in respect of "property the interest in which of the deceased or other person was only an interest as holder of an office" (Finance Act, 1894, s. 2 (1) *b*).

OFFICIAL FORMS. See "Forms in Use."

ONEROUS BEQUEST.

Where A. makes a specific bequest to B. and directs that in consideration of such bequest he shall pay the testator's debts, and makes B. his residuary legatee and executor, then if B. accept the bequest he is bound to pay the debts, although they exceed the value of his bequest, for he cannot take the specific bequest without its burden, and he is not entitled *quâ* residuary legatee to the residue until all the debts are paid.

It does not appear, however, that he is personally liable when the estate has been exhausted by the payment of the debts (*Re Cowley*, 53 L. T. Rep. N. S. 494; *Syer* v. *Gladstone*, 30 C. D. 614; 34 W. R. 565).

ONTARIO.

Date of Order in Council (Finance Act, 1894), Oct. 26, 1896.

Death Duty Acts: "The Succession Duty Act, 1892" (55 Vict. c. 6); "An Act to make further provisions for the payment of Succession Duty in certain cases" (58 Vict. c. 7); "An Act to make further provision for the payment of Succession Duty in certain cases" (59 Vict. c. 5).

The duty is a Succession Duty payable on all property within the province, whether or not the deceased was domiciled in Ontario at the time of his death.

Exemptions.

The Act does not apply—

1. To any estate the value of which, after payment of all debts and expenses of administration, does not exceed 10,000 dols.
2. To property given, devised or bequeathed for religious, charitable or educational purposes.
3. To property passing under a will, intestacy or otherwise, to or for the use of the father, mother, husband, wife, child, grandchild, daughter-in-law or son-in-law of the deceased, where the aggregate value of the property of the deceased does not exceed 100,000 dols.; and
4. Where the value of the property devised, bequeathed or passing to any one person under a will or intestacy does not exceed 200 dols., the same is exempt from duty.

SCALE.

Value of Property Liable to the Duty.	Rate of Duty per cent.
(*a*) Where the property of the deceased passes, either in whole or in part, to or for the benefit of the father, mother, husband, wife, child, grandchild, or other lineal descendant, daughter-in-law or son-in-law of the deceased, the same, or so much thereof as so passes, shall be subject, where the aggregate value of the property of the deceased exceeds 100,000 dols., to duty at the rate of	2½
Ditto ditto exceeds 200,000 dols.	5
(*b*) Where the property of the deceased exceeds 10,000 dols., so much thereof as passes to or for the benefit of the grandfather or grandmother, or any other lineal ancestor except the father or mother of the deceased, or to any brother or sister of the deceased, or to any descendants of such brother or sister, or to a brother or sister of the father or mother of the deceased, or any descendant of such last-named brother or sister, to duty at the rate of	5
Any person in any other degree of collateral consanguinity to the deceased, or any stranger in blood, to duty at the rate of	10

OPEN MARKET.

"The principal value of any property shall be estimated to be the price which, in the opinion of the Commissioners, such property would fetch if sold in the **open market** at the time of the death of the deceased" (Finance Act, 1894, s. 7 (5)).

See, however, "Agricultural Property."

OPTION.

1. Option to legatee—
   Where an option is given to a legatee to take as his share of the residue a particular estate at a price specified by the testator, the exercise of such option does not make such real estate (which was not subject to a direction or power to sell) liable to Legacy Duty (*Lord-Advocate* v. *Meiklam*, 22 Sco. Sess. Ca. 2nd Ser. 1427); but where a testator devised real estate to his nieces with a proviso that his nephew should have the option of purchasing the same for £10,000 Consols, and that upon his investing that amount for their benefit in the names of trustees the real estate should enure to the use of the nephew in fee simple, and that the nieces should convey the same to him accordingly, it was held upon the option being exercised that Legacy Duty was payable on the £10,000 Consols (*Attorney-General* v. *Wyndham*, 1 H. & C. 563). See Hanson, 4th ed. p. 517.
2. Option to lessee—
   Where real estate is leased with an option to the lessee to purchase the same for a certain sum, and the option is exercised within the specified time, such exercise operates as a conversion which dates from the execution of the lease, and the proceeds will be liable to both Stamp and Legacy Duty (*Collingwood* v. *Row*, 5 W. R. 484).
3. Option to trustees for sale to ALLOT the real estate in specie instead of selling—
   Where exercised, Succession Duty is payable on the value of the successor's interest, and not Legacy Duty (or Succession Duty, 51 Vict. c. 8, s. 21) on the *corpus*, there being no conversion in respect of the real estate allotted (*Attorney-General* v. *Mangles*, 5 Mee. & W. 120).
4. As to optional method of payment of Estate Duty, and Succession Duty, see "Instalments."

ORDER, in which assets applied for payment of debts, see "Assets."

ORDER OF PAYMENT OF DEBTS.

By personal representative of a deceased person—

1. Funeral expenses (*Rex* v. *Wade*, 1 Pri. 627).
2. Testamentary expenses. This includes costs of taking out grant and costs of administration action (*Penny* v. *Penny*, 11 Ch. D. 440).
3. Debts due to the Crown (Wentw. Off. Ex. 261).
4. Debts to which priority given by particular statutes.
   E.g. debts due to the parish by its overseers (17 Geo. 2, c. 38, s. 3).
   debts due to paving commissioners by their treasurers and collectors (57 Geo. 3, c. 29, s. 51).
   debts due to friendly societies by their officers, and regimental debts of officers and soldiers (38 & 39 Vict. c. 60, s. 15).
5. Judgment in courts of record whether prior in point of time or not.
6. Recognizances and Statutes.
7. Specialty and simple contract debts (32 & 33 Vict. c. 46, abolished the priority of specialty debts).

ORDER OF THE COURT.

Conversion under an order of the Court operates as from the date of the decree (*Hyett* v. *Mekin*, 25 Ch. D. 735).

Sales by the Court. See "Chancery, Court of;" "Conversion."

ORDERS IN COUNCIL.

It is enacted by s. 20 (3) of the Finance Act, that—

3. Her Majesty the Queen may, by Order in Council, apply this section to any British possession, where Her Majesty is satisfied that, by the law of such possession, either no duty is leviable in respect of property situate in the United Kingdom when passing on death, or that the law of such possession as respects any duty so leviable is to the like effect as the foregoing provisions of this section.

4. Her Majesty in Council may revoke any such Order, where it appears that the law of the British possession has been so altered that it would not authorize the making of an order under this section.

As to the British possessions to which this section has been applied by Order in Council, see "British Possessions."

ORNAMENTAL TIMBER

Includes trees growing naturally which are, in fact, ornamental, and trees planted for ornament, whether in fact ornamental or not, even though planted by the tenant-for-life himself. A tenant-for-life, unimpeachable for waste, who cut down ornamental timber, which the Court, on application, would have directed to be cut, was held entitled to the proceeds (*Baker* v. *Sebright*, 13 Ch. D. 179).

OUTGOINGS. See "Necessary Outgoings."

OVERPAID DUTY. See "Rectification of Duty."

P.

PARAPHERNALIA.

A wife's paraphernalia include such apparel and ornaments given her as ornaments of her person as are suitable to her rank and condition.

For example, jewels and trinkets given to her by her husband after marriage; but not old family jewels.

Gifts by relatives and friends will be considered gifts to her separate use.

The wife cannot dispose of her paraphernalia during her husband's lifetime; and the husband cannot dispose of them by will, although he may do so by act *inter vivos*.

They are, however, subject to his debts; but assets will, however, be marshalled in the widow's favour as to rank her claim next to creditors.

As to the order in which they are applied in payment thereof, see "Assets."

Where pledged by the husband, the wife, if survivor, can have the paraphernalia redeemed out of his personal estate, even to the prejudice of specific legatees.

It would seem that the Married Women's Property Act, 1882, does not affect the law as to paraphernalia (*Tasker* v. *Tasker* (1895), P. 1).

PARENT.

As to purchase or investment by a father in the joint names of himself and child, see "Advancement;" "Joint Investment."

As to rate of duty, see "Lineals."

PARISH AND PARISH CHURCH.

A gift for the use and benefit of a parish church is charitable (*Attorney-General* v. *Lord Hotham*, T. & R. 209).

PARISH AND PARISH CHURCH—*continued.*

A gift to repair the fabric of, or monument or tomb within, a church is charitable (*Hoare* v. *Osborne*, L. R. 1 Eq. 585).

Bequests for building and endowment of a church, being for a public if not a charitable purpose, are liable to duty at the rate of 10 (or 11½) per cent., either where given upon trust as a succession, within s. 16 of the Succession Duty Act, 1853, or, where given as a legacy, to Legacy Duty (*Re Parker*, 5 Jur. N.S. 1058). See "Charities, Gifts to."

A gift to build or repair a tomb, not within a church, is not charitable, and is therefore void if it involves a perpetuity (*Rickard* v. *Robson*, 31 Beav. 244).

PAROL TRUSTS

Do not fall within 44 Vict. c. 12, s. 38 (The Account Stamp Duty Act), for the disposition, by means of which the property must pass to render it liable to Account Stamp Duty, must be "by deed or any other instrument not taking effect as a will."

Where, however, a settlor has purchased stocks in the names of trustees to be held by them on trusts similar to those of his marriage settlement, and no deed or other instrument is executed relating to such investments, the PAROL disposition is held to be a voluntary settlement with regard to the said additions to the original trust fund so as to bring them within the provisions of sub-s. 2 (*c*) of s. 38.

Parol trusts are held under these circumstances to be within s. 38, notwithstanding the settlor died before June 1, 1889 (52 Vict. c. 7, s. 11, and *Attorney-General* v. *Theobald*, 24 Q. B. D. 557). S. 11 (1) of 52 Vict. c. 7, enacts (*inter alia*) that "the description of property marked (*c*) shall be construed as if the expression 'voluntary settlement' included any trust **whether expressed in writing or otherwise.**"

Estate Duty (Finance Act, 1894, s. 22 (*i*)).

The expression "settlement" means any instrument, whether relating to real property or personal property, which is a settlement within the meaning of s. 2 of the Settled Land Act, 1882, or if it related to real property would be a settlement within the meaning of that section, and **includes a settlement effected by a parol trust.**

Declarations of trust of real estate and leaseholds must be in writing (Statute of Frauds, 29 Cas. 2, c. 3, s. 7) unless the application of the rule would operate so as to effectuate a fraud.

A. declared trust of property other than land (not intended to be testamentary) may, however, be made verbally.

A. transferred stock into the name of B. (an illegitimate daughter), C. (her husband) and D., E. (their two oldest children), and by parol declaration, confirmed by an unsigned entry in a memorandum book, declared that such investments were to be for the benefit of all the children of B.

Held, a good declaration of trust, the stock being merely personalty (*Kilpin* v. *Kilpin*, 1 R. & K. 521).

A. (creditor) desired B. (his debtor) to hold the debt in trust for C. B. assented, and paid over part of the money to C.

Held, a valid declaration of trust had been created, and B. had been constituted trustee for C. (*McFadden* v. *Jenkins*, 1 Ph. 153).

A verbal testamentary trust, that is, one only intended to operate after death, is void (*Re Boyes*, 26 Ch. D. 531; *Vincent* v. *Vincent*, 35 W. R. 7).

PARTNERSHIP.

1. *Liability of Partners.*

Every partner in a firm is liable jointly with the other partners, and in Scotland severally also, for all debts and obligations of the firm incurred while he is a partner; and after his death his estate is also severally liable in a due course of administration for such debts and obligations so far as they remain unsatisfied, but subject in England or Ireland to the prior payment of his separate debts (s. 9 of Partnership Act, 1890).

The firm is also liable for the loss or injury caused by the wrongful act or omission of any partner acting in the ordinary course of the business of the firm, or with the authority of his co-partners (s. 10).

The firm is also liable to make good the loss where—

(*a*) Any partner misapplies money or property of a third person, which he receives, acting within the scope of his apparent authority.

(*b*) Any partner misapplies money or property of a third person, while in the custom of the firm, and received by the firm in the course of its business (s. 11).

The liability of each partner for wrongs (ss. 10 & 11) is joint and several (s. 12).

Examples (s. 11).

1. A., member of firm, A., B., C. (solicitors or bankers), is intrusted by X., who reposes special confidence in A., with money for investment. A. misapplies the money. The question to determine is whether the original transaction with A. was a partnership transaction, and, if so, whether the duty of the firm had determined before the default (Pollock, 6th ed. p. 49).

2. A., member of a firm, A., B., C. (solicitors), while a trust fund was in the possession of the firm, gives professional advice as to investment, such investment being negligently made on improper security. The firm was held liable (*Blyth* v. *Fladgate*, 1 Ch. 337).

The firm (A., B., C.) is not liable for improper employment of trust funds by A. (trustee) for partnership purposes (s. 13).

2. **Partnership property** (s. 20).

(1) All property and rights and interests in property originally brought into the partnership stock or acquired, whether by purchase or otherwise, on account of the firm, or for the purposes and in the course of the partnership business, are called in this Act partnership property, and must be held and applied by the partners exclusively for the purposes of the partnership and in accordance with the partnership agreement.

(2) Provided that the legal estate or interest in England, or in Scotland the title to and interest in any heritable estate, which belongs to the partnership, shall devolve according to the nature and tenure thereof, and the general rules of law thereto applicable, but in trust, so far as necessary, for the persons beneficially interested in the land under this section.

(3) Where co-owners of an estate or interest in any land, or in Scotland in any heritable estate, not being itself partnership property, are partners as to profits made by the use of that land or estate, and purchase other land or estate out of the profits to be used in like manner, the land or estate so purchased belongs to them, in the absence of an agreement to the contrary, not as partners, but as co-owners for the same respective estates and

PARTNERSHIP—*continued.*

interests as are held by them in the land or estate first mentioned at the date of the purchase.

Example.

A., B., C. are partners (cotton spinners). They agree to carry on the business at a cotton mill owned by A. The mill, fixed plant, and machinery are valued, and treated in the partnership books as A.'s capital, and he is credited with interest thereon as capital in the partnership accounts.

The firm subsequently, at their own expense, enlarge and improve the mill, and acquire other land and erect buildings for the same purpose.

The mill and the lands and buildings subsequently purchased are partnership property; and if, on a sale of the business, the proceeds of sale of the mill, plant, and machinery exceed the original valuation the excess is treated as partnership property (*Robinson* v. *Ashton*, 20 Eq. 55; Pollock on Partnership, p. 65).

Property bought with partnership money is *primâ facie* partnership property (s. 21).

Where land or any heritable interest therein has become partnership property, it shall, unless the contrary intention appears, be treated as between the partners (including the **representatives of a deceased partner**), and also as between the **heirs** of a deceased partner and his **executors** or **administrators**, as **personal** or moveable and not real or heritable estate (s. 22).

Property used for partnership purposes need not necessarily be partnership property, even though bought with the money of the firm (*Smith* v. *Smith*, 5 Ves. 193; *Walton* v. *Butler*, 29 B. 428).

The true test, in the absence of an express agreement, is the source whence the property in question was derived, the purpose for which acquired, and the manner in which it has been dealt with.

A., B., C. (partners) may agree to convert partnership property into the several property of any or all of the firm, or the several property of any or all into partnership property.

"Partnership property is that which is held by the partners as such for the purposes of the partnership; it is held for the purpose of carrying on the adventure of the partnership, and may be wanted for that purpose, and, moreover, at the time of the winding-up of the partnership the debts of the partnership will have to be paid, the question of their amount settled between the partners, and then the unexhausted assets divided between them. The partnership property must thus be treated in the end as subject to a trust for sale, and therefore it is personal property. That is explained in *Darby* v. *Darby* (3 Drew, 495) in a passage which has been set forth at length by the Court below (10 Q. B. D. 497, 498). If that is so as regards all the partnership property, land, when it is brought into and made part of the partnership property, becomes of course personalty, that is to say, its devolution will be affected by the fact that it has been brought into the partnership accounts and assets.

"**How is the character of personalty which has once been impressed upon land to be withdrawn or altered and the land remitted to its original character of realty?** It seems to me that in the case of partnership property land can be remitted to its original character only by virtue of such an agreement made between the partners as withdraws the land from the partnership assets, and puts an end to the implied trust for sale. If it was

PARTNERSHIP—*continued.*

made out that the partners had, during the partnership, agreed, however unusual the proposition and however impracticable such an arrangement might be in business, that at the death of one of the partners the land should not be sold or dealt with as part of the partnership assets, but held on a tenancy in common, I am not prepared to say that the land might not cease, upon such an agreement being made, to be personalty. If it is withdrawn from the partnership assets, to that extent it seems to me that the reason why it is considered personalty might possibly be affected. Nor should I be prepared to hold, though I do not say that the law may not be to the contrary, that, however unusual in business it might be, the parties might not agree that a portion of the partnership property should, upon any given count be appearing, be withdrawn from the partnership assets, or that the effect of such an agreement would not in such a case be to change its character into realty. But it seems to me clear, whatever may be the law as to these questions, that **the time when the death takes place is the moment at which it is to be decided whether the property in question is realty or personalty.** Whatever agreement is to affect the character impressed upon the property at this specific moment of time must be in the first place a binding agreement, and in the second place it must be an agreement which shall take effect at the moment of death.

"Let us take, first of all, something outside partnership altogether. Take the case of a man who can by his election reimpose the character of realty upon land which, but for his election, would continue to be treated as personalty, he must make that election by some act not subsequent to the death; he **cannot leave a will which after he is dead is to decide what is to be the nature of his property at the moment of his decease,**" *per* Bowen, L.J., in *Attorney-General* v. *Hubbuck* (1884), 13 Q. B. D. 289.

3. **Share of Partners.**

1. **At any particular date—**

Let A., B., C. constitute the firm. Then to find A.'s share. Realize and convert into money the **then** existing partnership assets; discharge the **then** existing debts and liabilities, A.'s proportion of the balance is the required share.

To arrive at such proportion the provisions of ss. 24, 44 should be noted, which enact that, apart from special agreement—

(*a*) (1) All the partners are entitled **to share equally** in the capital and profits of the business, and must contribute equally towards the losses, whether of capital or otherwise, sustained by the firm.

(2) The firm must indemnify every partner in respect of payments made, and personal liabilities incurred by him,

(*a*) In the ordinary and proper conduct of the business of the firm; or,

(*b*) In or about anything necessary done for the preservation of the business or property of the firm.

(3) A partner making, for the purpose of the partnership, any actual payment or advance beyond the amount of capital which he has agreed to subscribe, is entitled to interest at the rate of 5 per cent. per annum from the date of the payment or advance.

PARTNERSHIP—*continued.*

(4) A partner is not entitled before the ascertainment of profits, to interest on the capital subscribed by him (s. 24).

(*b*) **Losses** (including losses and deficiencies of capital) must be paid in the following order—

(1) Out of profits.
(2) Out of capital.
(3) By the partners *pro rata* [according to the proportion in which they were entitled to share profits].

Assets (including sums contributed by partners to make up losses or deficiencies of capital) must be distributed in the following order—

(1) To pay firm debts and liabilities to persons not partners.
(2) To pay partners *pro rata* for an advance, as distinguished from capital.
(3) To pay partners *pro rata* for capital contributed.
(4) To pay residue to partners in the proportion in which profits are divisible (s. 44).

It is important to note that where a partnership has been entered into for a fixed term, and the partnership is continued after the expiration of the term, continuance on the old terms (so far as consistent with the incidents of a partnership at will) is presumed (s. 27).

An assignee of a share in a partnership, either where the assignment is absolute or by way of mortgage, is only entitled to receive the share of profits to which the assigning partner would otherwise be entitled, and the assignee must accept the account of profits agreed to by the partners (s. 31).

2. **Of a Deceased Partner.**

Apart from special agreement **the amount due** to the deceased partner's representative from the surviving or continuing partners in respect of the deceased partner's share is **a debt accruing at the date of death** (s. 43), and is subject to the statute of limitations which runs from the deceased partner's death.

Share of Deceased Partner.

On the death of one of the partners, the partnership is dissolved apart from any agreement to the contrary. The executors of the deceased cannot interfere in the partnership business, but may bring an action to have the affairs of the partnership wound up.

The surviving partners have a right to a *pro tanto* reimbursement out of the estate of the deceased partner, where they have paid more than their share of the debts of the old firm. They, however, have no right to take the deceased partner's share at a valuation, nor to have it ascertained in any way other than by a conversion of the partnership assets, including the goodwill, where saleable.

The share of the deceased partner must be his share of the assets in actual existence at the date of his death, plus his share of profits obtained [since that date to the date of the account] by the employment of these assets; or in lieu thereof, at the option of the executors, interest at the rate of £5 per cent (s. 42).

Where, however, the surviving partners carry on the business for the benefit of the estate of the deceased partner, they (unless they are also his executors) are entitled to an allowance therefor, and where the executor carries on the

PARTNERSHIP—*continued.*

partnership business in conformity with directions in the deceased partner's will, he (the executor) will render himself personally liable for debts thereby contracted, but will be entitled to be indemnified out of the estate. See "Business."

Bequest of Partnership Share.

Where his share in the partnership is specifically bequeathed by the deceased partner, the specific legatee is simply entitled to be paid the amount due to the testator at the time of his death, with (subject to certain qualifications) the share of profits, attributable thereto, made since the death.

As to profits declared after the death—unless they were earned, and ought to have been declared before, in which case they would appear to form part of the general assets of the deceased partner—the specific legatee is entitled (*Browne* v. *Collins*, 12 Eq. 586).

Where bequeathed to persons in succession, the rule in *Howe* v. *Lord Dartmouth* (see "Conversion") would seem to apply.

Death Duties.

Goodwill of Partnership Business.

The share of a deceased partner in the goodwill of the business should, as forming part of his estate, be accounted for, for Death Duty purposes.

Profits of an ordinary partnership are not within the Apportionment Act, 1890 (*g.v.*).

The goodwill of a business is a partnership asset unless a merely personal goodwill (*Cooper* v. *Metropolitan Board of Works*, 25 Ch. D. 472). See "Goodwill."

With a view to avoiding a sale of the partnership on dissolution it is sometimes provided that the share of an outgoing or deceased partner shall be taken at a specified sum. More frequently, however, the partnership articles stipulate that the share shall be taken to be of the value appearing in the last signed account (*a*) and shall be paid with the addition of subsequent profits, or in lieu thereof, with interest at a specified rate. See *Pettyt* v. *Jameson*, 6 Madd. 146; *Browning* v. *Browning*, 31 B. 316.

Where, by the partnership deed, a deceased partner's share was to be taken at the value put upon it by the last balance sheet (and the past balance sheet made no mention of goodwill), it was held that the deceased partner could not be credited with any share in respect of the goodwill (*Hunter* v. *Dowling*, 72 L. T. 653).

An account may be conclusive for one purpose although not for another, *e.g.* for the purpose of calculating the profits to be divided so long as the firm is unchanged, but not for calculating the total amount to be paid to a partner on his expulsion from the firm. For example, the value of goodwill seldom, if ever, appears in annual accounts (*Steuart* v. *Gladstone*, 10 Ch. D. 626, 659; *Wade* v. *Jenkins*, 2 Giff. 509; *Blisset* v. *Daniel*, 10 Ha. 493). So, from the fact that nothing is reckoned for goodwill in taking annual accounts with a view to a division of profits, it does not follow that the goodwill is not to be reckoned on a dissolution of the partnership by the death or retirement of a partner.

Nor does it follow that because profits and losses are annually divided equally, the losses on a final winding up are to be divided equally, without reference to the capital of the partners (*Binney* v. *Matrie*, 12 App. Ca. 160; *Wood*

(*a*) This means as it stood in the partnership books (*Blisset* v. *Daniel*, 10 Ha. 511).

PARTNERSHIP—*continued.*

v. *Scoles*, 1 Ch. 369. And see *Coventry* v. *Barclay*, 33 B. 1; and on appeal De G. J. and Sm. 320. See Lindley on Partnership, pp. 401, 402, 421.

Probate or Estate Duty; Legacy Duty; Account Stamp Duty.

Where the deceased (testator or intestate) carried on a partnership business his share thereof should be included in the account annexed to the affidavit leading to the grant. A partnership balance-sheet signed by the surviving partners or partner should be annexed to show how the value has been ascertained.

The balance-sheet should include deceased's share of any partnership realty.

Partnership Real Estate.—Partnership realty, provided the surviving partner is within the jurisdiction of the Court of Probate, is, as being impressed with the character of personalty, liable to Probate Duty and Legacy Duty (*Forbes* v. *Steven*, L. R. 10 Eq. 178; *Stokes* v. *Ducroz*, 38 W. R. 525; *Lord-Advocate* v. *Macfarlane's Trustees*, 31 Sco. L. R. 357), and can only be reconverted by a binding agreement enforceable at law or in equity during the lifetime of the parties (*Attorney-General* v. *Hubbuck*, L. R. 13 Q. B. D. 275).

As to liability to **Account Stamp Duty** of annuity payable to the widow of a deceased partner (out of the gross profits of a business as carried on by the surviving partner) as "property passing" under a voluntary settlement, see *Attorney-General* v. *Wendt* (65 L. J. Q. B. 54).

See also *Attorney-General* v. *Gosling* (1892), 1 Q. B. 545, "Voluntary Settlement."

Not only are lands purchased out of partnership funds for partnership purposes treated in equity as personalty, but the rule also applies in certain cases where lands have been acquired by devise, the question being in every case whether or not the lands were "**substantially involved in the business**" (*Waterer* v. *Waterer*, L. R. 15 Eq. 402).

In *Laidley* v. *Lord-Advocate* (15 App. Ca. 468) it was held that Probate Duty was not payable on the share of a deceased in certain partnership property, which was sold by the executors under a power conferred by the articles of partnership. The articles of partnership provided that the business should be the carrying on and working of certain silks and indigo concerns, and zemindaries for the production, or manufacture, or working of indigo, and silk, and other produce, and for the sale in Calcutta, or shipment for realization in Europe, of such produce. The articles further provided that the entire business of the firm in India should be carried on by certain managing agents, who were required to be partners, who were alone entitled to use the name of the firm, to keep the books and prepare the balance-sheets, and who were also empowered (but subject to the opinion of the committee hereinafter mentioned) to determine what branches of business should be undertaken. A committee of the partners in England was appointed to advise with the agents, both in London and Calcutta, on all matters affecting the interest of the partnership, and, subject to the approval of a general meeting of the partners, to decide all matters affecting the partnership. It was further provided that on the death of any partner his representative should not become a partner in respect of his share, but that the interest of the deceased partner should cease from Sept. 30 next after his decease, **with power for the representatives to sell the share within a stipulated period**, or else to receive its fair value. A firm in London were declared to be the agents of the partnership in Europe, to whom the produce of the firm was to be

PARTNERSHIP—*continued.*

consigned, and the proceeds of the sales in India were to be remitted. The London agents were to make the advances necessary for carrying on the business, and held a mortgage over the assets, which were vested in trustees resident in the United Kingdom. The estates cultivated by the firm were situated in India, and the business, properly so called, was entirely carried on there. There were sixteen partners, all but two of whom resided in the United Kingdom.

In this case it was held that the share or interest of the deceased in the partnership property was not property situate in the United Kingdom, but situate abroad, and so exempt from Probate Duty, the sale since the death having no effect on the nature of the asset or its local situation.

A. carried on business in partnership in England under the style of "X. & Sons," and in Victoria under the style of "X. & Co." The partners were the same in both businesses, and were domiciled and resident in England. All the goods sold in Victoria were purchased by them in Europe, and were paid for by money remitted from Victoria. The books in Victoria were kept separate from the books in England; balance-sheets were made up in Victoria, and profits remitted to the partners in England.

Held (affirming the judgment of the Court below) that the business of X. & Co. was situate in Victoria, and that the interest of the testator in it was liable to Probate Duty in Victoria (*Beaver* v. *The Master in Equity of the Supreme Court*, 72 L. T. 127).

Succession Duty.

Construction of partnership deed—Succession Duty Act, 1853 (16 & 17 Vict. c. 51), s. 2.—A. admitted his son S. into partnership for a term of five years. S. brought no capital into the business, but the value of the business was estimated at £62,445, of which two-thirds was to be deemed A.'s share, and one-third the son's; and one condition of the partnership deed was that, in the event of A. dying during the partnership, S. was to take the whole of the business and pay to A.'s executors or administrators £10,000. By a deed of even date S. agreed to pay to A. and his executors a rent-charge of £139 per annum in respect of the freehold property of the partnership.

On the death of A. during the partnership, the Crown claimed Succession Duty in respect of A.'s share of the business which passed to S., less the sum of £10,000 payable by S. to the estate of the deceased.

Held, that S.'s acquisition of A.'s share of the business was a succession, on which Succession Duty was payable.

Judgment of Vaughan Williams and Kennedy, JJ. (45 W. R. 446), reversed.—*Attorney-General* v. *Brown*, C. A. 145.

PAWN.

Executors must redeem testator's goods in pawn where they are specifically bequeathed; they must also redeem the widow's paraphernalia where pawned by her deceased husband.

PAYMENT.

Estate Duty (Finance Act, 1894).

When payable.

The executor shall pay the Estate Duty in respect of **all personal property** (wheresoever situate) of which the deceased was competent to dispose at his death, **on delivering the Inland Revenue Affidavit** (s. 6 (2)).

PAYMENT—*continued.*

S. 8 (1) enacts, *inter alia*, that the existing law and practice relating to any of the duties now leviable on or with reference to death shall, subject to the provisions of this Act, and so far as the same are applicable, apply for the purposes of the **collection, recovery,** and **repayment** of Estate Duty.

S. 6 (7) enacts that the duty which is to be collected upon an **Inland Revenue Affidavit** or **account** shall be due on the **delivery** thereof, or on the **expiration of six months** from the death, whichever first happens.

By whom payable.

1. **The executor,*** as regards all testator's **personal property** of which he was **competent to dispose at his death** (s. 6 (2)), the duty (including that on leaseholds specifically bequeathed) **coming out of the residue**; the duty being presumably recoverable by the executor from those persons into whose hands it comes in the case of foreign personalty,† and property over which deceased had a general power of appointment by will (not exercised). He also **may pay** the duty on any other property passing on such death—

   (*a*) which, by virtue of any testamentary disposition of the deceased, is under the executor's control (*e.g.* real estate devised to the executor)—

   or (*b*) which is not under his control, where the accountable persons request him to make such payment (s. 6 (2)); and the executor, where so authorized, can raise the amount of duty, when already paid, whether the property is or is not vested in him, and any interest, and expenses properly paid or incurred by him in respect thereof, by the sale or mortgage of or a terminable charge on the property or any part thereof (s. 9 (5)).

   The executor must **specify** in appropriate accounts annexed to the Inland Revenue affidavit **all the property** in respect of which Estate Duty is payable; but his liability is limited to the assets which he has (or might have) received *quâ* executor (s. 8 (8)).

2. Estate Duty, so far as not paid by the executor, shall be collected upon an account setting forth the particulars of the property (s. 6 (4)), the accountable parties being **every person to whom any property passes** for any beneficial interest in possession, and also, to the extent of the property actually received or disposed of by him, every **trustee, guardian, committee,** or other person **in whom any interest** in the property so passing or the management thereof **is at any time vested,** and every other person in whom the same is **vested in possession by alienation** or other derivative title (s. 8 (4)). The duty here being borne by the property itself, and being raised by sale or mortgage of, or a terminable charge thereon (s. 9 (5)).

Mortgagee of an interest in expectancy liable *pro tanto*, unless the mortgage was before Aug. 2, 1894, and was for full consideration.

Donee of gift *inter vivos* liable; or a purchaser from him before the death.

See also "Purchaser."

* The term "executor" includes "administrator," etc. (s. 22 (1 *d*); s. 23 (11)). See "Executor."

† Where, however, the foreign personalty passes under a distinct foreign will, and comes under the sole control of a foreign executor (appointed by such will) not being also an executor of the English will, Estate Duty is not, in practice, demanded from the English executor.

PAYMENT—*continued.*

As to limitation of liability, see "Limitations."

The Commissioners may remit unpaid Estate Duty after the expiration of twenty years from the death (s. 8 (11)).

And see s. 8 (2) incorporating ss. 12–14 of 52 Vict. c. 7 (appendix).

As to discharge of accountable persons, see "Certificate."

On what Amount payable.

The principal value (s. 1); that is, the price which, in the opinion of the commissioners, such property would fetch (*a*) **if sold in the open market at the time of the death** (*b*) of the deceased (s. 7 (5)).

And s. 7 (3) enacts that—

Where the Commissioners are satisfied that any **additional expense in administering or in realizing property** has been incurred by reason of the property being situate out of the United Kingdom, they may make an **allowance from the value of the property** on account of such expense, not exceeding in any case 5 per cent. on the value of the property.

As to other allowances, see "Deductions."

See also s. 7 (8), which enacts that—

Subject to the provisions of this Act, **the value of any property** for the purpose of Estate Duty **shall be ascertained by the Commissioners in such manner and by such means as they think fit**, and if they authorize a person to inspect any property and report to them the value thereof for the purposes of this Act, the person having the custody or possession of that property shall permit the person so authorized to inspect it at such reasonable time as the Commissioners consider necessary.

As to the special cases of—

1. *Agricultural Property*, see proviso to s. 7 (5); also "Agricultural Property."
2. *Lands or chattels settled by Act of Parliament or royal grant*, s. 5 (5), enacts that—

   Where any lands or chattels are so settled, whether by Act of Parliament or royal grant, that no one of the persons successively in possession thereof is capable of alienating the same, whether his interest is in law a tenancy for life or a tenancy in tail, the provisions of this Act with respect to settled property shall not apply, and **the property passing** on the death of any person in possession of the lands and chattels shall be **the interest of his successor** in the lands and chattels, and such interest shall be **valued**, for the purpose of Estate Duty, **in like manner as for the purpose of Succession Duty.**
3. *Cesser of an Interest*, see "Cesser."
4. *Interests in Expectancy*, see "Interest in Expectancy."
5. *Gifts inter vivos.* The amount of duty payable is governed by the value of the "property taken" (s. 38 (2 *a*) of 44 Vict. c. 12, incorporated in the Finance Act, 1894), and not by the value at the death of the deceased.

(*a*) As to value of stocks and shares, see "Stocks and Shares."

(*b*) But s. 20 (2) of the Finance Act, 1896, provides that as regards objects of national, scientific, or historic interest, admitted by the Treasury to be such—

The person selling the same, or for whose benefit the same are sold, and also the person being in possession and competent to dispose of the same, shall be accountable for the duty, and shall deliver an account, in accordance with s. 8 of the principal Act, in the case of a sale **within one month after the sale**, and in the case of a person coming into possession or if in possession becoming competent to dispose, **within six months after he so comes into possession**, or **becomes competent to dispose.**

PAYMENT—*continued.*

As to rate of duty payable, see "Rates of Duty;" "Aggregation;" "Estate by Itself;" "Small Estates."

As to adjusted amount for Estate Duty, see "Fractions £10, £100."

Settlement Estate Duty.

When and by whom payable.

No provision is made by the principal Act for its collection; but it is merely a "further" Estate Duty (s. 5 (1 *a*)). And see *In re Webber* (1896), 1 Ch. 914: "It seems to me that for the purposes of the Act the provision for payment of the Settlement Estate Duty is covered by the provision for payment of the Estate Duty" (per North, J., in this case). And now s. 19 of the Finance Act, 1896, enacts that where personal property is settled by the will of a person dying on or after July 1, 1896, the duty shall be paid **by the executor, within six months after the death, out of the property settled,** apart from any contrary provision in the will.

On what amount payable.

The principal value at the death (s. 7 (5)), less the Estate Duty, debts, funeral and testamentary expenses, where the Residue is the settled fund.

Legacy Duty.

1. *When payable.*

The duty on legacies is to be accounted for at the time of payment, delivery or other discharge of the same, and not when the right to the legacy accrues; but if by reason of infancy or the absence of the legatee, or any other cause, the legacies cannot be paid, but are retained for the use of the legatees, the payment of the duties is not to be deferred until the actual payment of the legacies, but the duties should be accounted for when the legacies are so retained (36 Geo. 3, c. 52, ss. 6 and 32; *In re Hillas*, 2 Ir. Jur. 36).

A mere appropriation of funds by an executor to the purposes of a legacy by transferring them into his own name as trustee does not amount to a payment, retainer or satisfaction of the legacy within the terms of the Act (55 Geo. 3, c. 184, Sch. Part III.; *Attorney-General* v. *Manners*, 1 Price, 411; *Attorney-General* v. *Wood*, 2 Yo. & Jer. 290; *Attorney-General* v. *Hancock*, 2 M. & W. 563).

However, where the funds have been invested under an order of the Court, or paid into Court with the rest of the testator's assets in an administration suit, such investment or payment into Court is considered as amounting to precisely the same thing as a payment to the legatees themselves (*Hill* v. *Atkinson*, 2 Mer. 45, 2 Pri. 399; *Coombe* v. *Trist*, 1 My. & Cr. 69; *Attorney-General* v. *Loscombe*, 29 L. J. R. (Exch.) 305; 5 Hurl. & N. 564).

A legacy may be "satisfied" without the actual payment of any money by the executor to the legatee (*Attorney-General* v. *Holford*, 1 Pri. 427; *Attorney-General* v. *Metcalfe*, 6 Ex. 26).

As duty is payable upon every retainer, it sometimes happens that duty is payable under several estates in respect of the same property at the same time. See "Cumulative Duties."

2. *By whom payable.*

(*a*) Generally:

Persons **administering the personal estate** of a deceased owner,

PAYMENT—*continued.*

either as original or as derivative executors, or as trustees appointed by or in pursuance of the will (s. 6 of 36 Geo. 3, c. 52), or as administrators of his effects, or even as executors *de son tort*, are **primarily liable** for the Legacy Duty thereon.

Executors are absolved from liability on handing a fund to duly constituted trustees, whether originally or subsequently appointed (*Re Jones' Trusts*, 21 L. J. N. S. Ch. 566).

Duties are to be paid by executors or administrators on paying legacies (or residues).

Where legacies are retained by executors or discharged, and the duty, though deducted therefrom, is not paid, the amount of such duty is to be **a debt** from them to the Crown.

Where legacies are paid without the duty being deducted, the same to be a debt to the Crown from both parties. See *infra* as to liability of legatee, and also as to liability of purchaser from legatee.

The pendency of an administration suit does not relieve executors from their liability (ss. 6, 25 of 36 Geo. 3, c. 52; 28 & 29 Vict. c. 104) to deliver an account (*In re Sammon*, 3 M. & W. 381).

Where an executor A. pays money to B. as and for Legacy Duty the Crown has thereby a direct claim upon B. in respect thereof, and he cannot return the money to A. or appropriate it to any other purpose (see s. 8 of 13 & 14 Vict. c. 97; *Attorney-General* v. *Wenham*, Ex. 12 Jan. 1869, MS., cited Hanson, 4th ed. p. 399).

(*b*) In special cases—

1. Where an **annuity is charged on a legacy**, the legatee takes his legacy subject to the annuity, and is liable for the duty which is to be retained by him out of the annuity payable during the first four years (s. 9).
2. Where a **testator appoints by will** funds comprised in a settlement giving him a general power of appointment, his executors and not the trustees of the settlement are primarily accountable for the duty (*Re Philbrick's Trusts*, 13 W. R. 570; per Jessel, M.R., and James, L.J., *Re Hoskin's Trusts*, 6 Ch. D. 281). "Although if the trustees should take upon themselves to distribute the property among the appointees, without the intervention of the executors, they would probably be accountable as executors *de son tort*" (Hanson, 3rd ed. p. 50). See "Executor" (*Attorney-General* v. *New York Breweries Co.*, 46 W. R. 143).
3. **Plate, furniture, etc.**, while enjoyed in kind is not liable to duty till in the possession of persons having power to dispose thereof; but if actually sold or disposed of (apart from the propriety of such sale), then duty is chargeable upon and payable by the person or persons for whose benefit the same shall have been sold (s. 14).
4. As regards legacies and other **charges on real estate** or the proceeds thereof, the trustee, the devisee, or, where the property is sold subject to the charge, the purchaser, is liable to account for the duty (s. 5 of 45 Geo. 3, c. 28).
5. In the case of **a bequest to different persons in succession** (not liable to the same rate of duty) the persons accountable for

PAYMENT—*continued.*

the duty on the life-interest are the persons paying and receiving the income, and should they omit to pay the duty, those who take in remainder are not liable (*Bowra* v. *Rhodes*, 10 W. R. 747).

Where a legacy or residue or share of residue is bequeathed to be enjoyed by **different persons in succession**, not only the trustees originally appointed, but those subsequently appointed, are liable for duty on the property vested in them (*In re Jones' Trusts*, *supra*).

Where a legatee has **received his legacy without deduction** of the duty he is liable to reimburse the executors any duty they are afterwards called upon to pay (*Hales* v. *Freeman*, 1 B. & B. 391; *Foster* v. *Ley*, 2 Bing. N. C. 269; *Bate* v. *Payne*, 13 Q. B. 900).

Where a legatee **pays the duty to a solicitor** or other authorized agent of executor or trustee, such legatee is not liable for any misappropriation thereof, and the executor cannot afterwards recover it from the legatee (*Horn* v. *Coleman*, 26 L. J. R. (Ch.) 213).

A purchaser from a legatee, who, being but the purchaser of a chose in action, stands simply in the situation of the legatee (*Jennings* v. *Bond*, 8 Ir. Eq. Rep. 755), takes the legacy subject to the duty (*Nisbett's Trustees* v. *Learmonth*, 8 Sco. Sess. Ca. 2nd Ser. 69); which duty is not an "incumbrance," but a government charge (*Bliss* v. *Putnam*, 7 Beav. 40); and, therefore, on receiving the legacy without the deduction for the duty, the purchaser must pay over such duty to the revenue; or, if the executor be compelled to pay the duty, the purchaser must reimburse him (*Bryan* v. *Mansion*, 3 Jur. (N.S.) 473). The liability of a legatee (and therefore of a purchaser from a legatee) is, however, limited to the interest which he takes (*Attorney-General* v. *Giles*, 5 Hurl. & N. 255; *Hicks* v. *Keat*, 3 Beav. 141; *Wright* v. *Barnewell*, 13 Jur. 1041).

Where a legacy has been compounded for, then (*a*) where nothing has been said as to the duty, the amount of the duty must be deducted out of the sum payable to the legatee (*Fischer* v. *Earl of Seafield*, 4 Sco. Sess. Ca. 1st Ser. 192); but (*b*) where the sum paid for composition was agreed upon "as the price to be paid as a release of all claims" the administrator and not the legatee was held liable for the Legacy Duty thereon (*Greville* v. *Greville*, 27 Beav. 396). In this case a specific fund was bequeathed for payment of debts, and a claim being made in respect of a statute-barred debt the administrator offered £1150 "as the price to be paid as a release of all claims."

As to limitation of liability, see "Limitations."

3. *On what Amount payable.*

(1) The duty is chargeable upon the amount or value of the property as it stands, with its accretions of income (*Attorney-General* v. *Cavendish*, Wight. 82 (*a*); *Thomas* v. *Montgomery*, 3 Russ. 502 (*b*); *Advocate-General* v. *Oswald*, 10 Sco. Sess. Ca. 2nd Ser. 969 (*c*); *Nisbett's Trustees* v. *Learmonth*, 8 Sco. Sess. Ca. 2nd Ser. 69 (*d*); *Bate* v. *Payne*,

PAYMENT—*continued.*

13 Q. B. 900 (*e*)), at the time when the duty is computed, after deducting all proper payments actually made and incumbrances then actually existing, and not as the property stood at the time of the death of the deceased; but see "Accretions" as to modern practice.

(*a*) Accretions in respect of residue.

(*b*) Case of administration of assets by the Court, the duty being payable upon the whole amount (principal and interest) received by the legatee.

(*c*) Case where duty payable upon accumulations made by testator's direction.

(*d*) Case where duty payable on legacy with interest up to the time when the receipt (Form No. 1) is brought to be stamped and the duty paid.

(*e*) Case where executor, having been called upon to pay duty, not only upon the principal value of certain leaseholds but also upon the rents which had accrued during a period of fifteen years from the testator's death, was entitled to recover the whole amount from the specific legatee.

(2) Effects not consisting of money or securities for money (*e.g.* furniture, plate, pictures, etc., leaseholds) if not sold should be valued at the time the account is rendered. Where, however, "during the course of administration" they are sold for a sum in excess of such valuation, additional Legacy (and Probate or Estate) Duty will be payable in respect of such excess (*Attorney-General* v. *Dardier*, 11 Q. B. D. 16). See also "Valuation."

(3) Stocks, shares, etc., were formerly valued at the medium price of the day on which the account was rendered; the duty cannot be readjusted in consequence of the subsequent rise or fall in the value, provided the correct and proper value was inserted in the account in the first instance (see *Wishart's Executors* v. *Lord-Advocate* (*Galletly's Executors*), 18 Sco. L. R. 62); but see "Stocks and Shares" as to modern practice.

(4) "Where a legacy is satisfied otherwise than by payment of money or application of specific effects for that purpose, or shall be released for consideration or compounded for less than the amount of the value thereof," the duty is payable according to the value of the satisfaction (s. 23 of 36 Geo. 3, c. 52; *Fischer* v. *Earl of Seafield*, 4 Sco. Sess. Ca. 1st Ser. 192; *Greville* v. *Greville*, 27 Beav. 396). See *supra.*

(5) As to calculation of duty on annuities, see "Annuity."
The duty is deducted by the executors from the annuity as the instalments become due.

(6) As to deductions against Legacy Duty, see "Deductions."
Note that Legacy Duty on settled property is calculated after the deduction of Settlement Estate Duty thereon.

Succession Duty (16 & 17 Vict. c. 51).

When payable.

The liability to the duty attaches the moment the succession is created, but the duty is payable at the time **when the successor**, or any person in his right or on his behalf, **shall become entitled in possession** to his succession, or to the receipt of the income and profits thereof; except that if there shall be any prior charge, estate, or interest not created by the successor himself

PAYMENT—*continued.*

upon or in the succession, by reason whereof the successor shall not be presently entitled to the full enjoyment or value thereof, the duty upon the increased value accruing upon the determination of such charge, estate, or interest shall, if not previously paid, compounded for, or commuted, be paid at the time of such determination (s. 20).

Where, however, the title to the succession is accelerated by the extinction or surrender of any prior interests, the duty is to be paid "at the same time and in the same manner as if no such acceleration had taken place" (s. 15). See "Acceleration;" "Cumulative Duties;" "Covenant;" "Policy."

By whom payable.

1. **The Successor.**

The successor's liability, like that of other accountable persons, is apparently restricted to the property actually received by him. Where, therefore, he sells his succession prior to its falling into possession, the purchaser of such expectant succession (he being in fact a successor: *Solicitor-General* v. *Law Rev. Int. Society*, L. R. 8 Ex. 233) is, as between himself and the vendor, liable for the duty (*Cooper* v. *Trewby*, 20 Beav. 194). This is also the case where a tenant-for-life and a remainderman join in selling the estate in possession, unless the purchaser, or owner through him, dies before such tenant-for-life, in which case duty is payable under the purchaser's disposition (*In re Cooper and Allen*, 4 Ch. Div. 802), and the original claim is displaced. See s. 52 as to protection to *bonâ fide* purchasers purchasing without notice under a title not appearing to confer a succession. Purchasers and mortgagees are now exempted from liability after a specified period (s. 12, sub-s. 1 of 52 Vict. c. 7).

2. **The trustee** or trustees, guardian, committee, tutor, curator, or husband in whom the property or the management of it is vested; but to the extent only of the property or funds actually received or disposed of by them respectively (s. 44).

The term "trustee" includes an executor and administrator, and any person having or taking upon himself the administration of property affected by any express or implied trust (s. 1).

3. The person or persons **in whom** the succession shall be **vested by alienation or other derivative title** when the succession becomes an interest in possession (s. 44). See "Reversionary Interests, Alienation of."

The term "person" includes a body corporate, company and society (s. 1).

S. 42 provides that **the duty is a first charge on the interest of the successor**, and of all persons claiming in his right, in all the real property in respect whereof such duty shall be assessed; and also a **first charge** on the successor's interest in personalty on which assessed, while such property remains in the ownership or control of the successor, or of any trustee, etc., for him, or of the successor's husband; and the said duty is also a debt due to the Crown from the successor, having, in the case of real property, priority over all charges and interests created by him. The charge for duty may shift under certain circumstances (for example, sale of real estate and re-investment of proceeds in other real estate, in pursuance of a power to that effect) from the property to which it originally attached to property substituted (*Dugdale* v. *Meadows*, L. R. 6 Ch. App. 501). This section also applies where realty is sold under

PAYMENT—*continued.*

the Settled Estates Act, 1877 (*Re Warner's Estate*, 45 L. T. (N. S.) 36). The realty in this case was limited by a settlement in which there was no power of sale.

As to limitation of liability, see "Limitations."

On what amount payable.

1. **Successions in Real Property.**

(*a*) *Successions arising on a death after May* 19, 1853, *and before Aug.* 2, 1894.

Here the duty is, by s. 21, charged upon the value of the successor's life-interest in the **annual value** (*q.v.*) of the property,* calculated according to the tables provided by the Act.

The duty on leaseholds for a term is calculated on the value of the successor's life interest, or on the annual value for the term (Table III.), whichever is the less.

Where the successor takes **for life** only, and **dies before all the instalments are due**, they cease to be payable; where, however, the successor is "competent to dispose by will of a continuing interest in such property," the instalments unpaid at his death are a continuing charge on his interest in exoneration of his other property, and payable by the owner for the time being of such interest.

Duty, however, is payable upon the **principal value** (at once) where the succession is subject to a trust for **charitable** or public purposes (s. 16), or (by instalments) where it devolves to a **corporation** (s. 27).

Where the annual value is of a fluctuating character, as in the case of **manors, mines**, etc., such annual value is ascertained by reference either to the **average income** "during such a number of preceding years as shall be agreed upon for this purpose between the commissioners and the successor, before the first payment of duty on the succession shall have become due; or if no such period shall be agreed upon, then the principal value of such property shall be ascertained, and the annual value thereof shall be considered to be equal to interest calculated at the rate of **3 per cent. per annum on** the amount of such **principal value**" (s. 26).

Where the real property consists of **timber** (s. 23), or **advowsons** (s. 24), the duty is payable, if and when the property is sold, upon the **proceeds realized by sale**. See "Timber," "Advowson." As to settled plate, furniture, etc., see s. 32, *infra*, which incorporates s. 14 of 36 Geo. 3, c. 52. See also "Different Persons in Succession, Gifts to."

As to allowances made in estimating the annual value of successions, see "Deductions."

(*b*) *Successions arising on a death after Aug.* 1, 1894.

(i.) Where successor is not "competent to dispose." As in (*a*).

(ii.) Where successor is "competent to dispose."

S. 18 of the Finance Act, 1894, enacts that—

* As to the deductions which can be taken before the net annual value is arrived at, see "Deductions."

PAYMENT—*continued.*

(1) The value for the purpose of Succession Duty of a **succession to real property** arising on the death of a deceased person shall, where the successor is competent to dispose of the property, be the **principal value** of the property, after deducting the Estate Duty payable in respect thereof on the said death, and the expenses, if any, properly incurred of raising and paying the same; and the duty shall be a charge on the property, and shall be payable by the same instalments as are authorized by this Act for Estate Duty on real property, with interest at the rate of 3 per cent. per annum; and the first instalment shall be payable and the interest shall begin to run at the expiration of twelve months after the date on which the successor became entitled in possession to his succession or to the receipt of the income and profit thereof; and after the expiration of the said twelve months the provisions with respect to discount shall not apply.*

(2) **The principal value** of real property for the purpose of Succession Duty shall be **ascertained in the same manner as it would be** ascertained under the provisions of this Act **for the purpose of Estate Duty**;† and in the case of any agricultural property where no part of the principal value is due to the expectation of an increased income from such property, the annual value for the purpose of Succession Duty shall be arrived at in the same manner as under the provisions of this Part of this Act for the purpose of Estate Duty. See "Agricultural Property."

2. **Successions in Personal Property.**

S. 32 enacts that the provisions of ss. 8 (as to gifts by way of annuity), 10 (as to money laid out in the purchase of an annuity), 11 (as to application from time to time of allotted fund), 12 (as to gifts to different persons in succession), 14 (as to gifts of plate, furniture, etc.), and 23 (as to gifts satisfied otherwise than in money) of 36 Geo. 3, c. 52, relating to the assessment and payment of duty on personal estate, etc., shall be applicable to the personal property comprised in any succession, and to the assessment and payment of duty thereon, as if such personal property were a legacy bequeathed by the predecessor to the successor, and were subject to the said provisions.

S. 33 enacts that where the donee of a general power of appointment shall become chargeable with duty in respect of the property appointed by him under such power, he shall be allowed to deduct from the duty so payable any duty he may have already paid in respect of any limited interest taken by him in such property.

SS. 29 & 30 provide that the interest of a successor

(1) in moneys to arise from the sale of real property under any trust for the sale thereof;

(2) in personalty,

* As to the deductions which can be taken to arrive at the net principal value, see "Deductions."

† The principal value of any property shall be estimated to be the price which, in the opinion of the Commissioners, such property would fetch if sold in the open market at the time of the death of the deceased (s. 7 (5), Finance Act, 1894).

PAYMENT—*continued.*

subject to any trusts for the investment thereof in the purchase of real property, shall (so far as not chargeable under the Legacy Duty Acts, see s. 19 of 36 Geo. 3, c. 52, and s. 4 of 45 Geo. 3, c. 28) be chargeable as **personal property,** where the successor would be absolutely entitled, or as **real property** where he would not be absolutely entitled. And where there is no trust for investment in the purchase of real property s. 29 enacts that (1) shall be deemed personal estate chargeable under this Act.

Decided Cases.

(*a*) **Instalments a Continuing Charge** (s. 21).

The power of a tenant-in-tail in possession to enlarge his estate so that he shall become "**competent to dispose by will of a continuing interest**" in the property entailed, is part of his original succession, and if he exercises the power, any instalments of Succession Duty that may be unpaid at his decease will become a continuing charge on the property in the hands of his successor or other owner for the time being. It is otherwise where the tenant-in-tail dies without disentailing. **Lord Lilford** *v.* **Attorney-General** (L. R. 2 Eng. & Ir. H. L. App. 63).

"COMPETENT to dispose by will of a continuing interest" (s. 21), refers to the **quantity of interest** and not to the personal capacity of the successor to make a will. Therefore where a lunatic or *feme sole* being "competent to dispose, etc.," dies intestate before all or any of the instalments of duty are payable, the person succeeding to such disposable interest will be held liable for the payment of such instalments (**Attorney-General** *v.* **Hallett,** 2 Hurlst. & N. 368).

(*b*) **Payment by Reversioner—Right to Repayment.**

A. absolutely entitled to a reversionary interest in personalty, settled it upon the usual trusts of a marriage settlement, and, on the reversion falling in, paid the whole of the Succession Duty which had become payable thereon out of his own moneys.

Held, that having regard to s. 32 he was entitled to be recouped out of the *corpus* of the settled fund (**Cuddon** *v.* **Cuddon,** L. R. 4 Ch. D. 583).

(*c*) **Where Settled Real Estate is Sold** (s. 42).

1. Under a POWER in the settlement.

B., an expectant tenant-in-tail of property subject to a jointure rent-charge, disentailed and resettled the same subject to the charge, and gave his trustees the usual POWER of SALE and reinvestment.

After B. came into possession the trustees exercised the power of sale with the concurrence of the jointress (C.), who released her annuity.

Held, that the charge of Succession Duty that would become payable on the extinction of the jointure was shifted by s. 42 from the lands sold to the purchase-money, or the lands in which said money might be reinvested, and therefore the purchaser could not require such claim to be commuted under the provisions of s. 41, "a distinction being apparently made between cases of this kind, and sales by absolute owners who may spend the money, leaving nothing for the Crown to proceed against" (Hanson, 3rd ed. p. 287). See **Dugdale** *v.* **Meadows,** L. R. 9 Eq. 212; 6 Ch. App. 501.

PAYMENT—*continued.*

2. Under Settled Estates Act, 1877.

A sale under the powers conferred by the Settled Estates Act, 1877, by virtue of the operation of s. 22 of the said Act has the effect of revoking the uses of the settlement, and by s. 42 of the Succession Duty Act the duty is **shifted from the land sold to the purchase-money** or its investments, and the land in the hands of a purchaser is freed from Succession Duty. In this case the real estate was comprised in a settlement which contained no power of sale (**Warner's Settled Estates, In re,** 17 Ch. D. 711).

(*d*) **Proof of Payment.**

A certificate from the Controller of Legacy and Succession Duties to the effect that the duty is paid in respect of the land contracted to be sold, discharges a purchaser.

No particular form of certificate can be required by a purchaser (**Howe, Earl *v.* Lichfield, Earl of,** L. R. 2 Ch. App. 155).

(*e*) **Fund in Court.**

On application for payment out of Court of a fund on which Succession Duty would afterwards become payable, the Court recommended a commutation of the Succession Duty under s. 41 (**Bailey *v.* Tindall,** 18 Jur. 668). See also *Harding* v. *Harding* (2 Giff. 597).

Probate Duty.

1. *When and by whom Duty is payable.*

By the executors or administrators of the deceased within six months after death of the deceased, or within two calendar months after the termination of any suit or dispute respecting the will, or the right to letters of administration not ended within four calendar months after the death (55 Geo. 3, c. 184, s. 37; 44 Vict. c. 12, s. 40; 5 & 6 Vict. c. 82, s. 35 (Ireland); 48 Geo. 3, c. 149, s. 38 (Scotland). See "Penalties."

The duty is payable out of the residue (*Re Bourne* (1893), 1 Ch. 188), unless it (the residue) is a "specific fund" (see Theobald on Wills, 4th ed. pp. 120, 121), when the duty must be apportioned. Note also that by 23 & 24 Vict. c. 5, ss. 4 and 5, personal property over which deceased exercised a general power of appointment by will bears the Probate Duty attributable thereto.

2. *On what amount payable.*

Upon the **value** of the property with accretions (*Partington* v. *Attorney-General*, L. R. 4 Eng. & Ir. H. L. App. 100) at the **date** of the grant, and is payable by means of stamps and not in money. In cases of original grants in England and Ireland the stamp is transferred from the grant itself to the affidavit of value required to be delivered by the person applying for such grant (**44 Vict. c. 12, s. 27**), a certificate from the Court of the affidavit being duly stamped being substituted for the stamp on the grant.

Account Stamp Duty.

1. *When and by whom payable.*

Accounts are to be delivered by every person who, as beneficiary, trustee, or otherwise, acquires possession or assumes the management of any personal or moveable property liable to the duty, **upon retaining the same** to his own use, or distributing or disposing thereof, and **in any case within six months after the death** of the deceased (s. 39 of 44 Vict. c. 12).

PAYMENT—*continued.*

The penalty of **double the amount of duty** chargeable is imposed for not delivering an account within the period (six months from the death) prescribed by law (s. 40 of 44 Vict. c. 12).

2. *On what amount payable.*

The duty is chargeable upon the **amount** or **value** of the property as it stands **at the time of the delivery of the account**; including all rents, dividends, or interest accrued upon the property between the date of death and the time of the assessment.

Effects, not consisting of money or securities for money and not sold, are to be valued at the time the account is rendered, when inventories and proper valuations thereof will be required to be produced.

Appraisements and valuations of any property made for the purpose of ascertaining the duty payable in respect thereof on an account under this Act are exempt from STAMP DUTY.

Temporary Estate Duty.

On affidavits (52 Vict. c. 7, s. 5 (1), Appendix; and see Probate Duty, *supra*).

On accounts (s. 5; and see Account Duty, *supra*).

On successions (s. 6, sub-ss. 1, 4, 6; and see Succession Duty, *supra*).

PAYMENT INTO COURT.

Legacies (*a*) which cannot be paid by reason of the infancy or absence of the legatee, may be paid into Court in conformity with the provisions of s. 32 of 36 Geo. 3, c. 52.

This section was explained and amended by the 37 Geo. 3, c. 135, but that Act, and so much of the present section "as requires the Accountant-general to invest the money therein mentioned in the purchase of three per cent. consolidated bank annuities, or to give any certificate," were repealed by the Court of Chancery Funds Act, 1872 (35 & 36 Vict. c. 44); and the whole of the section, except as regards Scotland, was repealed by the Trustee Act, 1893 (s. 51). (*b*) See Hanson, 4th ed. p. 492.

Costs of payment of legacy into Court must be borne by the estate; but the legatee pays the costs of payment out (*Re Cawthorne*, 12 B. 56).

PAYMENT OUT OF COURT.

Supreme Court Funds Rules, 1894.

Rule 20.—When an order directs the payment, transfer, or delivery of funds in Court, in respect of which duty shall be payable to the revenue under the Acts relating to **Legacy**, or **Estate**, or **Succession Duty**, and **does not direct**

(*a*) Form of certificate of the Commissioners of Inland Revenue as to the payment of duty on legacies of this character is No. 0282.

(*b*) 1. Trustees, or the majority of trustees, having in their hands or under their control money or securities belonging to a trust, may pay the same into the High Court; and the same shall, subject to Rules of Court, be dealt with according to the orders of the High Court.

2. The receipt or certificate of the proper officer shall be a sufficient discharge to trustees for the money or securities so paid into Court (s. 42 of Trustee Act, 1893).

Where trustee justified in paying money into Court.

1. Where he cannot get a valid discharge; for example, where the beneficiaries are infants, or lunatics (*Re Cawthorne* (*supra*); *Re Irby*, 17 B. 334); or married women, not coming within the provisions of the Married Women's Property Act, 1882.

2. Possibly, in cases of dispute between beneficiaries.

3. Where the trustee has a *bonâ fide* doubt as to the law.

4. Where he has "received a *bonâ-fide* claim sanctioned by respectable solicitors" (*Re Maclean*, 19 Eq. 282). But see Underhill on Trusts, 4th ed. p. 534.

PAYMENT OUT OF COURT—*continued.*

the payment of such duty, it shall be stated in the payment schedule that such payment, transfer, or delivery is subject to duty, and in such case the paymaster is to have regard to the circumstance that such duty is payable; and when by an order funds in respect of which such duty may be chargeable are directed to be invested, carried over or placed to a separate account, the words "subject to duty" shall be added in the schedule to the separate account directed to be opened.

Rule 52.—When money in Court or any sum payable thereout is by an order directed to be paid to any public officer or department, or to the official liquidator of any company, or any other official persons for whom an account is kept at the bank, payment thereof shall, on a requisition to that effect, be made by a direction to the bank to transfer the amount of such payment to the proper account at the bank accordingly. When any duty is directed to be paid out of funds in Court, such duty shall, without any words in the order to that effect, be assessed, and, on a requisition made by or on behalf of the Commissioners of Inland Revenue, be transferred to the proper account at the bank.

Rule 66.—The paymaster, before acting upon an order for the payment, transfer, or delivery of funds, in respect of which Legacy, Estate, or Succession Duty is (under rule 20) stated to be payable, shall require the production of the official receipt for such duty, or a certificate from the proper officer of the payment thereof, or that no such duty is payable; and the paymaster, on receiving notice from the proper officer in any case that such duty is payable, shall cause a memorandum to that effect to be made in his books.

PECUNIARY LEGACY.

A pecuniary legacy is a testamentary gift of money, and as stock in the funds is not money, legacies of stock are not properly pecuniary legacies. The term "pecuniary legacies" would apparently include annuities, unless the testator distinguishes between legatees and annuitants (*Gaskin* v. *Rogers*, L. R. 2 Eq. 284).

Pecuniary legacies "under £20" were made liable to duty by s. 42 of 44 Vict. c. 12.

PENALTIES.

Legacy Duty.

Penalty for payment or receipt of legacy, etc., liable to duty without a stamped receipt, £10 per cent. on the value of the property (s. 28 of 36 Geo. 3, c. 52).

Every legacy receipt to be dated on the day of signing, and the duty thereon paid within twenty-one days from the date thereof, under penalty of £10 per cent. on the amount of the duty.

If the duty be not paid within three months from the date of such receipt, the penalty is £10 per cent. on the amount or value of the legacy.

The Commissioners of Inland Revenue cannot under any circumstances stamp a receipt on which the duty shall not be paid within twenty-one days from the date unless the penalty incurred be also paid (s. 29). See also 48 Geo. 3, c. 149, s. 44.

Executors to transmit the particulars and pay the duty on legacies bequeathed to them, within fourteen days of retainer, or in default to incur a penalty of treble the value of the duty (s. 35).

PENALTIES—*continued.*

Penalty of £500 for altering receipts after assessment with intent to defraud (s. 39).

Probate (and Account) Duty.

Penalty of £100 and £10 per cent. on the duty for not proving wills or taking out letters of administration within six calendar months after the death of the deceased, or within two calendar months after the termination of any suit or dispute respecting the will or the right to letters of administration not ended within four calendar months after the death (s. 37 of 55 Geo. 3, c. 184).

"You must look to the object of the statute. S. 37 merely inflicts a penalty upon an executor or administrator for not proving the will or taking out letters of administration within a certain specified time. But it was not intended that the representatives of the deceased should thereby be prevented from taking out probate or letters of administration after that time. The sole object of that statute is to secure the payment of the duty to the revenue" (*per* Parke, B., in *Bodger* v. *Arch*, 10 Ex. 337).

The Commissioners may by 28 & 29 Vict. c. 104, s. 57, waive the penalty and sue for the duty.

Penalty of £100 and £10 per cent. upon the amount of the sum wanting to make up the proper (Probate) duty where executors and administrators do not pay full duty on probate, etc., within six calendar months after the discovery of the mistake or misapprehension or of estate and effects belonging to the deceased, not known when the duty was paid (55 Geo. 3, c. 184, s. 43). And see now s. 40 of 44 Vict. c. 12, which makes the penalty double the amount of the duty.

Penalty of double the amount of the duty chargeable for non-delivery of an account upon retainer for his own use, disposition, or distribution of the property included therein by the person who as beneficiary, trustee, or otherwise, acquires the possession, or assumes the management thereof (ss. 39, 40 of 44 Vict. c. 12).

Succession Duty.

Persons made accountable for the payment of Succession Duty, in case of wilfully neglecting to give notice of succession, or deliver a full and true account of the property at the prescribed period (s. 45 of 16 & 17 Vict. c. 51), are liable to a penalty of £10 per cent. on the amount of the duty (reckoned for this purpose in all cases as if payable at 1 per cent.), for every month during which such neglect may continue (s. 46).

Temporary Estate Duty.

Penalty of double the amount of the duty chargeable for non-delivery of statement for the payment of Temporary Estate Duty (52 Vict. c. 7, s. 8 (1)).

Estate Duty (Finance Act, 1894).

S. 8 (6) enacts that—

A person who wilfully fails to comply with any of the foregoing provisions (*a*) of this section shall be liable to pay £100, or a sum equal to double the amount of the Estate Duty, if any, remaining unpaid for which he is accountable, according as the Commissioners elect; provided that the Commissioners, or

(*a*) For example, an accountable person "who wilfully fails to" deliver an account "within the time required by the Act" (s. 8 (4)); or "deliver and verify a statement" of particulars required (s 8 (5)); or "deliver and verify" account or statement on oath and by the production of books and documents (s. 8 (14)).

PENALTIES—*continued.*

in any proceeding for the recovery of such penalty the Court, shall have power to reduce any such penalty.

Generally.

The person by whom arrears of duty are payable is now liable to pay interest thereon at the rate of 3 per cent. per annum, recoverable in the same way as arrears of duty, but the acceptance by the Commissioners of duty and interest is an absolute WAIVER of PENALTIES. In practice this course is adopted. See "Arrears."

S. 22 of 53 & 54 Vict. c. 21 (Inland Revenue Regulation Act, 1890) enacts that—

(1) Any fine or **penalty** incurred under any Act relating to inland revenue may be sued for and recovered, and any goods seized as forfeited under any such Act may be returned for condemnation and condemned in the High Court.

(2) **The proceedings** for the recovery of any such fine or **penalty** or for the condemnation of any such goods shall be commenced **within two years next** after the fine or penalty is incurred or the seizure is made.

S. 32 enacts that Commissioners on recovering fines and penalties may reward informers. Where the reward exceeds £50 the consent of the Treasury to be obtained.

S. 35 enacts that Commissioners may mitigate fines and penalties incurred under this Act or any other Act relating to Inland Revenue.

PENSION.

1. S. 15 (3) of the Finance Act, 1894, enacts that—
   Estate Duty shall not be payable in respect of any pension or annuity payable by the Government of British India to the widow or child of any deceased officer of such government, notwithstanding that the deceased contributed during his lifetime to any fund out of which such pension or annuity is paid. See "India."
2. The Treasury, or such department as they may depute, may hand over arrears of civil pay or pensions not exceeding £100 to the persons appearing to be entitled, without any grant of probate or representation (31 & 32 Vict. c. 90).

PERJURY.

As to Probate Duty, see 55 Geo. 3, c. 184, s. 53.
As to Legacy Duty, see 36 Geo. 3, c. 52, s. 38.

PERPETUITIES. See "Rule against Perpetuities."

"PERSON"

Includes a corporation (Interpretation Act, 1889, s. 19).

"PERSONAL ESTATE."

What constitutes "personal estate" within ss. 7 and 20 of 36 Geo. 3, c. 52, and s. 4 of 8 & 9 Vict. c. 76. (a)

(a) S. 7 of 36 Geo. 3, c. 52, defines a legacy to be "any gift . . . which shall . . . have effect, or be satisfied out of the **personal estate**" of the testator, or out of any **personal estate** which he "shall have power to dispose of as he shall think fit," etc.

S. 20 enacts that "estates *pur autre vie*, applicable by law in the same manner as personal estate, shall be charged with the duties hereby imposed as **personal estate**."

S. 4 of 8 & 9 Vict. c. 76 makes liable to Legacy Duty "every gift by any will or testamentary instrument which by virtue of such will or instrument is payable out of personal or moveable **estate** or effects of which the testator had power to dispose," etc.

"PERSONAL ESTATE"—*continued.*

1. Estates *pur autre vie* (applicable by law as personal estate).
   The liability of estates *pur autre vie* under s. 20 of 36 Geo. 3, c. 52, is not affected by the fact that deceased owner died domiciled abroad (*Chatfield* v. *Berchtoldt*, L. R. 7 Ch. App. 192).
2. Partnership real estate.
   Being impressed in equity with the character of personal estate, it is liable as such to Legacy Duty (*Forbes* v. *Steven*, Law Rep. 10 Eq. 178). See also "Partnership Property."
3. Scotch patents, granted to the patentee, his executors and administrators, have been held to be personal estate (*Advocate-General* v. *Oswald*, 10 Sco. Sess. Ca. 2nd Ser. 969). It has, however, been decided that profits arising from lighthouse tolls are real and not personal estate (*Attorney-General* v. *Jones*, 1 McN. & Gor. 574).

PERSONAL PROPERTY.

1. Personal property (including leaseholds) is liable to Probate Duty where the assets are within the jurisdiction of the Court at the time when the right to such duty attaches (*Attorney-General* v. *Hope*, 1 Cr. Mee. & Rosc. 530; 55 Geo. 3, c. 184; 43 Vict. c. 14; 44 Vict. c. 12). But see (6), *infra.*
2. Personal property of a moveable nature, wherever situate, is liable to Legacy Duty, where the deceased dies domiciled in this country (36 Geo. 3, c. 52; 55 Geo. 3, c. 184, Sch. Part III.; 8 & 9 Vict. c. 76, s. 4; *Re Ewin*, 1 Cr. & Jerv. 151; *Thomson* v. *Advocate-General*, 12 Cl. & Fin. 1).
3. Personal property (including leaseholds) may be liable to Account Stamp Duty (44 Vict. c. 12, s. 38; 52 Vict. c. 7, s. 11 (1)). But see (6), *infra.*
4. Personal property (including leaseholds) may be liable to Temporary Estate Duty—
   (*a*) Where included in affidavit or inventory (52 Vict. c. 7, s. 5 (1)).
   (*b*) Where included in an account (52 Vict. c. 7, s. 5 (2)).
   (*c*) Where comprised in a succession (52 Vict. c. 7, s. 6).
   But see (6) *infra.*
5. Personal property (including leaseholds) may be liable to Succession Duty (16 & 17 Vict. c. 51), for example—
   (*a*) Settled personalty.
   (*b*) Personalty in this country over which a testator, dying domiciled abroad, exercises a general power of appointment (*Re Lovelace*, 4 De G. & Jo. 340; *In re Wallop's Trusts*, 1 De G. Jo. & Sm. 656).
   Personal property in this country belonging to a foreigner is not liable to Succession Duty under his will or intestacy.
   (*c*) Personalty derived from persons dying on or before April 5, 1805, is not liable to Legacy Duty so far as regards ancestors or descendants; but it is to Succession Duty if the death upon which they became entitled to receive the legacy takes place after May 19, 1853 (*Attorney-General* v. *FitzJohn*, 2 H. & N. 465).
   Where money given by the will of a person dying domiciled abroad upon trust for A. for life, remainder to B., is, at A.'s death, invested in English securities, or under the control of British trustees, Succession Duty is payable by B. (*Attorney-General* v. *Campbell*, L. R. 5 E. & I. App. 524).
   (*d*) Where personalty is bequeathed to A. and B. as joint tenants, and either

PERSONAL PROPERTY—*continued.*

(say A.) dies (after May 19, 1853) without receiving his share or otherwise severing the joint tenancy, the beneficial interest thereby accruing to the survivor (B.) is a succession (s. 3). Not so, however, where the deceased joint tenant (A.) was exempt from Legacy Duty (s. 16 of 36 Geo. 3, c. 52). But see "Joint Tenancy."

(*e*) Where personalty has been invested in the joint names of A. and B., the beneficial interest accruing by the death of either to the survivor is a succession (s. 3), and may also be liable to Account Stamp Duty. But see (6), *infra.*

(*f*) Bequest of personalty upon such trusts as A. shall appoint; the personalty upon being appointed is liable to Succession Duty (s. 4). See Hanson, 3rd ed. p. 89.

"Personal property," for the purposes of the Succession Duty Act, includes money payable under any engagement, and money secured on heritable property in Scotland, and all other property not included in the term "real property" which, for the purposes of the Act, includes (*inter alia*) leaseholds.

Note, (1) that leaseholds (except leaseholds for lives) are liable to Probate and Account Stamp Duty as **personal** property (*a*), and all leaseholds are liable to Succession Duty as **real** property; (2) that real property impressed with the character of personalty is liable to Legacy Duty under 45 Geo. 3, c. 28, s. 4, or where the testator dies on or after July 1, 1888, to Succession Duty (51 Vict. c. 8, s. 21); (3) that personal property directed to be laid out in the purchase of land may be liable under 36 Geo. 3, c. 52, s. 19, to Legacy Duty (See *Lord-Advocate* v. *Macfarlane and others*, 29 Sco. L. R. 393), and under 16 & 17 Vict. c. 51, s. 30, to Succession Duty. See "Conversion."

6. Personal property in the United Kingdom is liable to Estate Duty where passing on a death after Aug. 1, 1894 (Finance Act, 1894, s. 1), and such payment excuses the Probate, Account, and Temporary Estate Duties, also the "Additional Succession Duty" (*q.v.*); so also are moveables so passing when **situate out of the United Kingdom if**, under the law in force before the passing of this Act, **Legacy or Succession Duty is payable** in respect thereof, or would be so payable but for the relationship of the person to whom it passes, s. 2 (2).

7. As to local situation of chattels personal, chattels real, choses in action, etc., see "Locality."

PIN MONEY.

A yearly allowance settled upon the wife before marriage for the purchase of clothes or ornaments, or otherwise for her separate expenditure, and in order to deck her person suitably to the rank and agreeably to the tastes of her husband.

The wife can only recover one year's arrears against her husband and his representatives; her representatives, however, cannot claim any arrears (*Howard* v. *Digby*, 2 Cl. & Fin. 634).

PLATE, FURNITURE, ETC., GIFT OF.

Plate, etc., while enjoyed in kind is not liable to Legacy Duty till in the possession of persons having power to dispose thereof; but if actually sold or disposed of then duty is chargeable upon and payable by the person or persons for whose benefit the same shall have been sold (s. 14 of 36 Geo. 3, c. 52). (*b*)

(*a*) But see (6), *infra.*

(*b*) Note that s. 32 of the Succession Duty Act, 1853, incorporated the provisions of s. 14 of the Legacy Duty Act.

PLATE, FURNITURE, ETC., GIFT OF—*continued.*

See also "Heirlooms;" "Under £20."

Where duty is paid on the value, a proper valuation should be produced; see "Valuation."

POLICY MONEYS.

I. **Where deceased is competent to dispose.**

Probate Duty, Estate Duty, and Legacy Duty.

Policy moneys (with bonuses), recoverable by the legal personal representative of the deceased, are liable to Probate or Estate Duty, and Legacy Duty, and this, whether effected on the life of the deceased, or on that of any other person. In the latter event, a certificate from the secretary of the insurance office as to the surrender value, at the date of the grant, or (Estate Duty) death of the deceased, should be annexed to the affidavit.

Where deceased dies domiciled abroad, insured in a company in the United Kingdom, the company may pay the policy moneys without the production of a grant of representation obtained here (47 & 48 Vict. c. 62, s. 11; 52 & 53 Vict. c. 42, s. 19). Estate Duty, however, is, in practice, held to be leviable thereon.

Where policy moneys are not paid until M months from the death, the full value, £V, less £$\frac{MV}{400}$, by way of discount, is the sum to be accounted for as the value, at the death, for Estate Duty purposes.

An insurance policy may be the subject of a *donatio mortis causâ* (*Amis* v. *Witt*, 33 B. 619).

II. **Where deceased is not competent to dispose**: for example, where the policy is kept up for the benefit of a donee, whether nominee or assignee.

Account Stamp Duty [*and Succession Duty*].

Is payable upon any money received under a policy of assurance **effected by any person dying (on or after June 1, 1889, and before Aug. 2, 1894) on his life,** where the policy is wholly kept up by him for the benefit of a donee, whether nominee or assignee, or a part of such money in proportion to the premiums paid by him, where the policy is partially kept up by him for such benefit (52 Vict. c. 7, s. 11 (1)).

Where, however, the death is on or after **Aug. 2, 1894, Estate Duty,** and not Account Stamp Duty, will be payable (Finance Act, 1894, s. 2 (1) (*c*) and (*d*)), and see *Lord-Advocate* v. *Robertson*, *infra*.

Where there are (say) two policies of assurance (P, Q) effected on the life of the deceased, D., of which he was not, at his death, competent to dispose, and he, D., paid the premiums on policy P, and another person, E., paid the premiums on policy Q, then on D.'s death after Aug. 1, 1894, **Estate Duty** is payable in respect of the moneys arising from policy P (s. 2 (1) (*d*) Finance Act, 1894); but no Estate Duty is payable in respect of the moneys arising from policy Q (cf. *Lord-Advocate* v. *Robertson*, *infra*). For analogous reasons it is also thought that no Estate Duty would be payable on moneys passing on D.'s death where secured by the bond or covenant of E.

Examples.

Assignment by F. of policy of assurance for £1200, effected on his life (*ob.* 1893) in the North British and Mercantile Assurance Office in favour

POLICY MONEYS—*continued.*

of his sister C., and within three months of his death. Account Stamp Duty and Succession Duty (s. 17 of 16 & 17 Vict. c. 51) payable, the duty in both cases being proportionate to the premiums paid by the deceased. Similarly, where F. is a nominee under a Nomination Policy. Immaterial when assignment made, where F. dies after June 1, 1889.

On the marriage of B. and C., A. (father of C.) settles a policy of assurance for £3000 effected on the life of B. in the Sun Life Office.

A. also covenanted to pay to trustees £4000 within six months of his death, with interest at 4 per cent. meantime from date of marriage, upon trust out of the income thereof to pay the yearly premiums on said policy so as to keep the same on foot. No Estate Duty, but only Succession Duty payable.

The sum assured by policies of assurance effected under Customs Fund Regulations, or under Insurance Regulations of the Crown Agents for the Colonies, is liable to Estate Duty under ss. 1 and 2 (1) (*c*) and (*d*) of the Finance Act, 1894.

The premiums in the former case are paid in full by the member's subscription (s. 2 (1) (*c*)); but in the latter case the clerk contributes only a part of the premiums, the Crown agent providing the remainder (s. 2 (1) (*d*)). In each of these cases the sum assured is treated, in practice, as an estate by itself.

However, in the case of annuities or lump sums payable to widows and children of ministers of Dissenting religious communities, the annuity or lump sum is only liable to Estate Duty to the extent of the proportion attributable to the proportion of the premium contributed by the deceased member.

S. 17 of the Succession Duty Act, 1853, enacts that there is no succession in respect of a life policy as between the assurers and the assured; but where the assured, voluntarily or in consideration of marriage, assigns the policy effected on his life, such assignment will confer a succession on the assignee. Where, however, any of the premiums have been paid by the assignee, in practice, the proportion of the assurance money on which Succession Duty is payable is ascertained thus: Let the total number of the premiums paid be thirty, of which the assignor has paid twenty, then Succession Duty is payable on twenty-thirtieths, or two-thirds of the assurance money.

In re Maclean's Trusts (L. R. 19 Eq. 274).

A policy in the Customs Benevolent Fund is a policy of assurance within s. 17, and an assignment of such a policy to a nominee for a pecuniary consideration does not create a succession.

A bequest, however, of such a policy, though not liable to Legacy Duty (*Attorney-General* v. *Rowsell*, 36 Ch. D. 67, n) is liable to Succession Duty (*Attorney-General* v. *Abdy*, 1 H. & C. 266).

Oldfield *v.* Preston (3 De G. F. & J. 398; 10 W. R. 257).

Surviving subscribers to a tontine are not chargeable with Succession Duty in respect of the increase of benefit from time to time accruing to them, inasmuch as a tontine is a contract for value within the exemption of s. 17, each subscriber on payment of his subscription becoming, in effect, entitled to a contingent reversionary interest in the fund by contract with the other subscribers.

POLICY MONEYS—*continued.*

Lord-Advocate *v.* **Robertson (32 Sco. L. R. 444).**

A. effected a policy of insurance on his own life, and paid the premiums thereon. He assigned the policy, seven years before his death, to his daughter B. (the respondent) gratuitously, who thenceforth kept up the policy, by paying the premiums out of her own pocket.

Held, on A.'s death, that B. was not liable to pay either Succession Duty under the Succession Duty Act, 1853, or Account Duty under the Customs and Inland Revenue Act, 1889, upon the policy moneys, on the ground that B. had not been designated as donee at the time when A. was keeping up the policies.

PORTIONS.

I. In a strict settlement of realty the portions term (1000 years) in favour of the younger children of the marriage, precedes the estate tail limited to the eldest son, and therefore is not extinguished by disentailment.

Where a second or younger son, at the period for distributing the portions, has become the eldest, and takes the estate by virtue of the settlement, the general rule is that, unless there exists a strong presumption to the contrary, he will be excluded from a portion, though the portion may have already vested in him (*Gray* v. *Earl of Limerick*, 2 De G. & S. 370; *Swinburne* v. *Swinburne*, 17 W. R. 47).

There may, however, be circumstances to show that the eldest son is to be ascertained at the time of vesting, and not at the period of distribution (*Windham* v. *Graham*, 1 Russ. 331).

Portions do not vest before they are payable.

If a sum of money be given to a person charged upon real estate, and that person being an infant, is not to have the legacy immediately, but it is given at twenty-one or payable at twenty-one, if the child does not attain twenty-one the legacy is not raisable (*Parker* v. *Hodgson*, 1 Dr. & Sm. 568).

Where, however, the time of payment has respect not to the **legatee personally** (*e.g.* his attaining twenty-one), but to the **estate or convenience of the owner** (as where there is a preceding life estate), the portions vest before the day of payment, and do not merge or sink into the estate (*Evans* v. *Scott*, 1 H. L. 57).

See also "Merger."

If portions are not raisable till the death of the tenant-for-life, they will not carry interest except from that time, though they may have become vested previously, unless a contrary intention appears (*Massey* v. *Lloyd*, 10 H. L. Cas. 248).

Provisions for raising portions for children of devisor, or of any person taking any interest under the will, are excepted from the Thellusson Act (39 & 40 Geo. 3, c. 98, s. 2).

As to satisfaction of portions (secured by settlement) by legacies, see "Satisfaction."

II. **Estate Duty.**

Where real estate is devised by A. to B., and charged by the will with portions in favour of C. and D., the duty must be paid by B., who must look to the portioners, C. and D., for their rateable proportion of the duty, see Finance Act, 1894, ss. 9 (1), 8 (4), 14 (1).

S. 9 (1) makes the rateable part of the Estate Duty on an estate in proportion

PORTIONS—*continued.*

to the value of any property which does not pass to the executor as such, "a first charge on the property in respect of which duty is leviable," that is, Estate Duty on real estate, which does not pass to the executor as such, is payable upon the whole real estate so passing, no matter how the beneficial interest in that real estate may be divided.

S. 8 (4) imposes on "every person to whom any property so passes for any beneficial interest in possession" the burden of accounting for the duty.

S. 14 (1) gives the person, who being required to pay has paid the Estate Duty on such property, the power to recover the proper rateable part of the Estate Duty from the person entitled to "any sum charged on such property (whether as capital, or as an annuity, or otherwise), under a disposition not containing any express provision to the contrary."

See also "Jointure Rent Charge."

III. **Succession Duty** (16 & 17 Vict. c. 51).

1. Where the portions are to be raised on the younger children respectively attaining twenty-one, and the income to be applied during minority, duty is not payable in respect of the sums appointed until they respectively vest. Duty will, however, be payable from time to time on the sums applied by way of interest.
2. Where the portions are to be raised and invested and the income applied during minority, duty is payable as in the case of an immediate gift.
3. Where a successor takes a deduction in his succession account in respect of portions charged (s. 34 of 16 & 17 Vict. c. 51), a claim for Succession Duty will arise in respect of any charge so deducted which merges in the estate by reason of the death under twenty-one of one or more of the younger children.
4. An absolute charge (*e.g.* portions for younger children, see *Attorney-General* v. *Floyer*, *infra*) which confers a new succession upon the grantees, is to be distinguished from a mere incumbrance created by an expectant successor for which he is entitled to no allowance on becoming entitled in possession (s. 34).

And where portions for younger children are charged upon a succession in real property, and directed to be raised and paid only when the children respectively attain twenty-one, or (daughters) marry, then in the event of the charge taking effect, the successor is entitled to a *pro tanto* return of the duty (s. 35).

A., tenant-for-life, and B., tenant-in-tail-in-remainder, disentail and resettle to such uses as they shall jointly appoint.

They appointed thus—

To A. for life (*ob.* 1834),
Remainder to B. for life (*ob.* 1855 without issue),
Remainder to B.'s sons in tail male,
Remainder to C. (another son of A.) for life,
Remainder to C.'s sons in tail male.

Power to successive tenants-for-life when in possession to charge portions for younger children.

C. exercised this power in favour of children E. and F.

C. succeeded on B.'s death as tenant-for-life taking his succession as derived from B. as predecessor. **E. and F. also take their succes-**

PORTIONS—*continued.*

sions to the portions as derived from B. (*Attorney-General* v. *Floyer*, 9 Ho. Lds. Cas. 477).

5. Where the tenant-for-life (the donee of the power to charge) under the settlement dies on or after July 1, 1888, **Succession Duty at the higher rates** will be payable in respect of the portions appointed (51 Vict. c. 8, s. 21). In such a case, however, where the power was conferred by will, and the testator, dying before July 1, 1888, himself charged (the power merely enabling the donee to appoint), Legacy Duty at the lower rates would be payable.

POST-NUPTIAL SETTLEMENT.

A post-nuptial settlement is, generally speaking, a voluntary one; but where made in pursuance of a binding ante-nuptial agreement, it stands in the same position as an ante-nuptial settlement.

Ante-nuptial settlements are, however, sometimes in part voluntary; for example, where the limitations are in favour of persons (generally collateral relations) not coming within the marriage consideration.

POST-OBIT BONDS.

1. *Succession Duty.*

The disposition or devolution of moneys payable under a bond or contract made by any person *bonâ fide* for valuable consideration in money or money's worth for the payment of money or money's worth upon the death of any other person, confers a "succession," except as between the person making such bond or contract, and the person to whom it is made; "but any disposition or devolution of the moneys payable under such . . . bond . . . if otherwise such as in itself to create a succession within the provisions of this Act, shall be deemed to confer a succession" (s. 17 of 16 & 17 Vict. c. 51).

2. *Account Duty* (44 Vict. c. 12, s. 38).
3. *Estate Duty* (Finance Act, 1894, ss. 1, 2 (1. *c*)).

POWERS OF APPOINTMENT.

Powers are general (absolute) or special (limited).

A **general power** of appointment is a power to appoint to whomsoever the donee pleases.

Powers are also divided into **common law powers** [(1) Common law powers strictly so-called; for example, power given by a testator to his executor to sell lands, where no interest therein is devised to them; (2) Statutory powers; powers given, for example, by the Settled Land Act, 1882, to a tenant-for-life to sell or lease the lands], and **powers operating by way of trust or use** (usually found in marriage settlements).

On the bankruptcy of the donee of a general power, the power vests in his trustee in bankruptcy, who can exercise it for the benefit of his creditors (46 & 47 Vict. c. 52, ss. 44 and 56).

On the death of a donee of a general power, where executed by will, the property appointed becomes assets for the payment of the deceased donee's debts (3 & 4 Wm. 4, c. 104). And see Married Women's Property Act, 1882, s. 4, as to a similar provision as regards the wills of married women.

An exercise of a general testamentary power by a married woman will make the

POWERS OF APPOINTMENT—*continued.*

property appointed liable for her debts (*London Chartered Bank of Australia* v. *Lempriere*, L. R. 4 P. C. 572).

And s. 27 of the Wills Act (1 Vict. c. 26) enacts that a general gift of land or goods, by will is to include all land or goods over which the testator had a general power of appointment (*Williams* v. *Mitchell* (1891), 3 Ch. 474).

This section practically abolishes the distinction between property and power for the purpose of devises and bequests so far as a general power of appointment is concerned.

And the will operates as an appointment though made before the creation of the power (*Airey* v. *Bower*, 12 App. Cas. 263), provided the power comes into existence before testator's death (*Jones* v. *Southall*, 32 B. 31). Except where exercised by will there must be some reference to the power or the property. But a power which requires some formality (*e.g.* reference to the power, etc.) other than that of execution or attestation, and which the will does not comply with, is not within s. 27 (*Phillips* v. *Cayley*, 43 Ch. D. 222); neither is a power of revocation and new appointment (*Re Brace* (1891), 2 Ch. 671).

An infant (male over 20, female over 17) can with the consent of the Court exercise a general power of appointment for the purpose of settling the property over which it subsists in view of marriage (Infant's Settlement Act, 1855 (s. 1)). And, unless the infant was a tenant-in-tail, such appointment is not void where the infant dies under 21 (*In re Scott* (1891), 1 Ch. 298).

A **special power** is one where the donee is restricted to some objects designated in the instrument creating the power; for example, to his own children.

Special powers are not within ss. 25, 27 of the Wills Act.

The appointment to be valid must be in favour of objects of the power, and though the donee of a power to appoint in fee simple may appoint a less estate, this does not apply in the case of a power to appoint in tail (*Re Porter*, 45 Ch. D. 179). There must be some reference to the power or the property, or in the case of a will an intention to exercise the power otherwise expressed.

See further, Theobald, 4th ed. p. 204, *et seq.*

In a special power the appointee's estate vests from the creation, and not, as in the case of a general power, from the execution of the power; therefore no estate can be created which would not have been valid if limited by the instrument creating the power.

1. **The Probate Duty.**

Personal estate over which a deceased person has exercised a general power by will is, under the provisions of 23 & 24 Vict. c. 15, ss. 4 and 5, liable to Probate Duty. Before this Act it was decided in *Platt* v. *Routh*, 6 M. & W. 756, that it was not so liable.

2. **The Legacy Duty** (ss. 7, 18 of 36 Geo. 3, c. 52; s. 4 of 8 & 9 Vict. c. 76).

(*a*) **Limited power.**—An appointment whether by deed (*Sweeting* v. *Sweeting*, 22 L. J. R. (Ch.) 441) or will (*Attorney-General* v. *Pickard*, 3 M. & W. 552) under a limited power confers a gift under the instrument by which such power was created, even if a condition be attached by the appointor (*Attorney-General* v. *Lord Henniker*, 21 L. J. R. (Exch.) 293; *Lord Henniker* v. *Attorney-General*, 22 L. J. R. 41; *Sweeting* v. *Sweeting*, 22 L. J. R. (Ch.) 441).

For example, where A. devises real estate to B. for life with remainders over, and gives B. (and the successive tenants-for-life) power to appoint rent-charges in favour of their respective wives, the exercise of such a power

POWERS OF APPOINTMENT—*continued.*

confers a legacy under A.'s will. See effect of 51 Vict. c. 8, s. 21, and "Charges on Real Estate."

Where a legacy is given to B. for life and on his death to the children of C. as he shall appoint, the legacy is chargeable with duty as a legacy given to different persons in succession (ss. 18 and 12 of 36 Geo. 3, c. 52). See *infra*.

(*b*) **General power.**—Any property appointed by will in pursuance of a general power for that purpose is chargeable with duty as a legacy under that will, whether the power were created by deed (*Re Cholmondeley*, 1 Cro. & M. 149) or by a previous will (*Platt* v. *Routh*, 6 M. & W. 756). Where, however, the power was created by will, and the donee of the power also took a limited interest in the property, s. 18 (see *infra*) makes the property appointed chargeable upon the exercise of the power, with duty as a legacy to the donee under the original will, in addition to the duty with which it becomes chargeable as a legacy to his appointees under his own will.

Where property is given to A. for life and on his death to such persons as he shall appoint, or is given immediately to such persons as A. shall appoint, and in each case in default of appointment to himself, the property is charged with and pays duty as if given to A. absolutely in the first instance, without such power of appointment (s. 18). See *infra*.

36 Geo. 3, c. 52, s. 18.

How duty on legacies subjected to power of appointment to be charged.

Where subjected to a limited power of appointment, the legacy is chargeable with duty as a legacy given to different persons in succession.

Where subjected to a general and absolute power of appointment, the donee of the power taking also a limited interest in the legacy under the will, then

If the donee does NOT take in default of appointment the legacy is on the execution of the power to be charged with the same duty as if it had been given immediately to the donee, allowance being made for any duty already paid in respect thereof.

If the donee takes in default of appointment the duty is chargeable as if it had been given absolutely to him in the first instance.

Examples.

BEQUEST TO A. FOR LIFE AND ON HIS DEATH—

(*a*) To the children of B. as A. shall appoint.

(*b*) As A. shall appoint, and in default of appointment to C.

(*c*) As A. shall appoint, and in default of appointment to himself (A.).

In case (*a*) the bequest is chargeable with duty as a bequest to different persons in succession (ss. 18 and 12 of 36 Geo. 3, c. 52), so that if A. and the children of B. are liable to the same rate of duty, duty will be payable on the bequest as "in the case of a legacy to one person."

In case (*b*), where A. and C. are liable to different rates of duty, duty is payable in the first instance on the value of A.'s life interest, and upon A.'s executing the power, duty is then payable upon the bequest as if

POWERS OF APPOINTMENT—*continued.*

immediately given to A., allowance being, however, made for any duty previously paid in respect of such life interest.

In case (*c*) duty is payable as if the bequest was an absolute one in the first instance without such power of appointment (s. 18).

A general power of appointment, although qualified by the exclusion of certain persons from becoming the objects of it, is held to be a power to dispose as the donee of the power shall think fit within the meaning of s. 7 (*Platt* v. *Routh*, 6 M. & W. 756; *Drake* v. *Attorney-General*, 10 Cl. & Fin. 257): also so held to be a general power although it only authorized a disposition by will (*Platt* v. *Routh*, 6 M. & W. 756; *Attorney-General* v. *Brackenbury*, 1 Hurlst. & Colt. 782).

3. **The Succession Duty** (ss. 4 and 33 of 16 & 17 Vict. c. 51).

(*a*) **Limited power.**—S. 4 expressly enacts that persons taking a succession under the exercise of a limited power shall be deemed to derive it from the person by whom the power was created.

(*b*) **General power.**—S. 4 provides that "where any person shall have a general power of appointment under any disposition of property taking effect upon the death of any person dying after the time appointed for the commencement of this act, over property, he shall in the event of his making any appointment thereunder be deemed to be entitled at the time of his exercising such power, to the property or interest thereby appointed as a succession *derived* from the *donor* of the power."

The power must take effect upon a death after May 19, 1853, of some person other than the donee himself, although it may have been exercised before said date.

S. 33. Where the donee of a general power of appointment shall become chargeable with duty in respect of the property appointed by him under such power, he shall be allowed to deduct from the duty so payable any duty he may have already paid in respect of any limited interest taken by him in such property.

As to cases not coming within s. 4, a succession created by the exercise of a general power of appointment is to be referred to the instrument creating the power, the appointee deriving his interest from the *donor* of the power (as in the case of limited powers) and not from the donee, as predecessor. See "Predecessor."

Examples.

1. Devise to A. for life, and on his death as he shall by will appoint. Here A. is "competent to dispose by will of a continuing interest" within the meaning of s. 21, and all the instalments of Succession Duty become payable whether the power be exercised or not. Where, however, the testator died after Aug. 1, 1894, A. would pay on the principal value of his succession (Finance Act, 1894 (s. 18)).
2. Personalty settled on A. for life (*ob.* 1879), with remainders to C. for life, and on his death as C. shall appoint; C. appoints by deed to D. Succession Duty is chargeable in respect of the property appointed by C. (s. 4), but an allowance to be made in respect of the duty paid on the value of C.'s limited interest (s. 33).
3. Personalty bequeathed upon such trusts as A. shall appoint. Legacy Duty not payable on a gift of this description by force of s. 18 of 36 Geo. 3,

POWERS OF APPOINTMENT—*continued.*

c. 52; but A. on appointing the gift becomes liable to Succession Duty under the provisions of s. 4 of 16 & 17 Vict. c. 51 (Hanson, 3rd ed. p. 89).

4. **The Estate Duty** (Finance Act, 1894).

Property, over which a person dying on or after Aug. 2, 1894, had "at the time of his death" such a **general power** as would, if he were *sui juris*, enable him to dispose of the property, is property over which such a person is deemed competent to dispose (ss. 2, 22, 2 (*a*)); and Estate Duty is payable on the **principal value** thereof (s. 1). See "Competent to Dispose."

And the expression "general power" includes every power or authority enabling the donee or other holder thereof to appoint or dispose of property as he thinks fit, whether exercisable by instrument *inter vivos* or by will, or both, but exclusive of any power exercisable in a fiduciary capacity under a disposition not made by himself, or exercisable as a tenant-for-life under the Settled Land Act, 1882 (45 & 46 Vict. c. 38), or as mortgagee (s. 22, 2 (*a*)).

Money, which a person has a **general power to charge** on property, shall be deemed to be property of which he has power to dispose.

Where A. has a general power of appointment, then

1. If he exercises the power, the property appointed forms part of his free estate, and is aggregable with any other property which can be aggregated.
2. If he fails to exercise the power, then Estate Duty is still payable; but the question of aggregation will be determined by the relation, to him (A.), the donee of the power, of those who take in default of appointment.

5. As to power to jointure, charge portions for younger children, see "Jointure;" "Portions."

As to when a power may be said to "take effect," see Hanson, 4th ed. pp. 595, 596.

6. **Power of revocation.**

Is usually inserted in voluntary settlements, and sometimes in marriage settlements.

Where a power to revoke the uses of the settlement is reserved, the exercise of the power renders the settlement void; where, however, there is also a power of new appointment (and unless there is something in the settlement to the contrary, a power of new appointment will be implied where a power of revocation is reserved (1 Sug. Pow. 461)), new uses can be declared, and such new uses cannot be again revoked, unless a new power of revocation has been reserved (1 Sug. Pow. 449).

Account Stamp Duty and Estate Duty.

Liability of fund, where power of revocation is reserved:—

S. 11 (1) of 52 Vict. c. 7 enacts (*inter alia*) that sub-s. 2 of s. 38 of the Customs and Inland Revenue Act, 1881, is hereby amended as follows:—

The description of property marked (*a*) shall be read as if the word "twelve" were substituted for the word "three" therein, and the said description of property shall include property taken under any gift, whenever made, of which property *bonâ fide* possession and enjoyment shall not have been assumed by the donee immediately upon the gift and thenceforward retained, to the entire exclusion of the donor, or of any benefit to him by contract or otherwise.

Examples.

1. A., who died after June 1, 1881 (and before Aug. 2, 1894), assigned LEASEHOLDS (value above £100) to his brother, B.

POWERS OF APPOINTMENT—*continued.*

The deed contained a power to revoke.

Account Stamp Duty payable.

2. A. settles, by voluntary settlement, a certain fund upon trust for B., C., and D. A power of revocation is reserved. A. dies in 1882.

Although A. does not reserve any interest for life, or other period determinable by reference to death, yet Account Duty is payable on his death, for such death removes the possibility of the interest of B., C., and D. being divested by the exercise of A.'s power to revoke. It then passes to them absolutely.

3. A. settles £2000 by voluntary settlement upon trust for B. for life, remainder to B.'s children as B. should appoint.

A. reserves a power to revoke.

B. appoints one-fourth of the fund, on the occasion of the marriage of one of her daughters, C., which share is settled upon the usual trusts.

A. dies in 1891 without exercising the power to revoke.

Account Duty is payable on the three-fourths of the settled fund, but not on the one-fourth appointed in favour of the daughter, if it can be shown that A. was privy to C.'s marriage, and knew that a settlement was being made on the faith that the daughter took a share under the voluntary settlement.

And **Estate Duty** is payable on gifts *inter vivos* of property (**real** or personal) made (by a person dying on or after Aug. 2, 1894) at any time, whereof *bonâ fide* possession was not immediately taken and thenceforth retained to the entire exclusion of the deceased, but a benefit, either charged upon the property or not, was reserved or secured to the deceased by contract or otherwise, or a **power or authority was reserved** to the deceased to restore to himself or to reclaim the absolute interest in such property or in some part of it (Finance Act, 1894, s. 2 (1 *a*); 2 (1 *c*), which incorporates s. 38 (2) of 44 Vict. c. 12, and s. 11 (1) of 52 Vict. c. 7, *supra*).

7. **Joint powers.**

"A joint power of appointment is, in my opinion, an entirely different thing in intention and practical operation from a general and absolute power of appointment in one individual.

"In the latter case it is really and practically the equivalent of property; when exercised, the property becomes assets. In the other case it is, what it purports to be, a form of remoulding a settlement according to the exigencies of the family," *per* James, L.J., in *Attorney-General* v. *Charlton*, L. R. 2 Ex. D. 398. See "Predecessor" for examples of joint powers.

8. **Defective Execution.**

Equity aids the defective execution of a power if

(*a*) the defect is not material; for example, where A. has a power to appoint by deed and he appoints by will. Where, however, a power to appoint by will is executed by deed, equity will afford no relief, inasmuch as an irrevocable instrument has been made use of in the place of a revocable one; nor where the will is sufficiently affected;

and if, moreover,

(*b*) The execution of the power is in favour of—

A purchaser, or mortgagee, or lessee from the appointor.

A creditor of the appointor.

POWERS OF APPOINTMENT—*continued.*

A charity.

A wife or child, if legitimate, of the appointor.

Equity affords no relief in the case of a non-execution of a power except where (*a*) the execution has been prevented by fraud, (*b*) the power is coupled with a trust, as, for example, where A. gives property to his children in such shares as B. shall appoint, and B. makes no appointment, and there being no provision in default thereof; here the Court exercises the power in favour of the children equally (*Harding* v. *Glynne*, 2 W. & T. Ca.).

The excessive execution of a power is generally bad as to the excess where the execution is complete, and the bounds between it and the excess clear. For example, an appointment to children will not include grand-children, and can only be upheld as being first, an appointment to a child and then an assignment to his issue (*Routledge* v. *Dorril*, 2 Ves. Jun. 357).

Appointments, however, which contravene the rule against perpetuities are not severable but fail wholly.

POWER TO ALLOT, SELL, ETC., REAL PROPERTY. See "Conversion."

POWER TO EXCHANGE. See "Exchange."

PRECATORY TRUSTS.

Where a person has used words ambiguous in themselves but recommending or desiring a certain thing, then (*a*) if the subject-matter is certain, and (*b*) the object is certain, and (*c*) upon a construction of the entire instrument the intention appears to have been to use the words in an imperative sense and not merely in a discretionary sense, then a binding trust is created which is styled a precatory trust. The tendency of modern decisions appears to be against construing precatory words as creating binding trusts, and rather to leave them as a wish or desire and nothing more (*Mussoorie Bank* v. *Rayner*, L. R. 7 App. Ca. 321; *McCormick* v. *Grogan*, L. R. 4 H. L. 82).

"I have no hesitation in saying myself, that I think some of the older authorities went a great deal too far, in holding that some particular words appearing in a will were sufficient to create a trust. Undoubtedly confidence, if the rest of the context shows that a trust is intended, may make a trust; but what we have to look at is the whole will which we have to construe. . . . Having regard to the later decisions, we must not extend the old ones in any way, or rely upon the use of particular words; but, considering all the words which are used, we have to see what is their true effect, and what was the intention of the testator as expressed in his will," *per* Lord Justice Cotton in *Re Adams and Kensington Vestry*, 27 Ch. D. 408.

And see also decision of Court of Appeal in *Re Diggles*, *Gregory* v. *Edmundson*, 39 Ch. D. 253.

PREDECESSOR.

1. *Definition.*

"The term 'predecessor' shall donote the settlor, disponer, testator, obligor, ancestor, or other person from whom the interest of the successor is or shall be derived" (s. 2 of Succession Duty Act, 1853).

2. The person making the disposition is the predecessor where the succession is by disposition; the last possessor, where the succession is by devolution.

Where in the case of estates tail, the successor is called *nominatim* he is held to

PREDECESSOR—*continued.*

take by disposition from the maker of the entail; the same rule applies where the successor comes in as the first of a new series of heirs under a substitutive limitation to his ancestor and the heirs male of his body.

A person, however, who succeeds as one of a class of heirs to another of the same class, takes by devolution from his immediate ancestor.

3. A. (tenant-for-life) and B. (tenant-in-tail in remainder) disentail and resettle.

The tenant-in-tail (B.) is predecessor to all those who succeed him under the resettlement. He is also his own predecessor taking his succession "under a disposition made by himself." The original instrument creating the entail is, however, referred to in order to ascertain the rate of Succession Duty with which he is chargeable (s. 12 of 16 & 17 Vict. c. 51).

4. Successions conferred by the exercise of powers of appointment—

(*a*) *General powers* (s. 4).

Where the power comes into operation after May 19, 1853, the succession conferred by its exercise is derived by the appointee from the appointor (or donee of the power), and not from the donor of the power.

(*b*) *Limited powers* (s. 4).

Here, and also in the case of general powers coming into operation before May 19, 1853, the appointee is held to derive his interest from the donor of the power.

5. Joint predecessors—

Where the succession is derived from more predecessors than one, and where the proportional interest derived from each of them is not distinguishable, the succession, in the absence of any agreement with the Commissioners as to the duty payable, is to be deemed to be derived in equal proportions from each predecessor (s. 13).

6. Disposition made by direction of purchaser for valuable consideration. Here the purchaser is the sole predecessor.

Decided cases.

1. (*a*) **Where appointees are held to derive their interest from the donor of a power of appointment.**

In re Lovelace's Trusts (4 De G. & Jo. 340).

A., domiciled abroad, succeeds (before May 19, 1853) to an **absolute power** of appointment over settled personalty, which power A. exercised by WILL after May 19, 1853. Here the appointees were held to take their title under the SETTLEMENT creating the power and not under the will. The case, however, would have fallen within s. 4 had the appointor (A.) succeeded to the power by a death after May 19, 1853.

Lord Braybrooke *v.* Attorney-General (9 Ho. Lds. Cas. 150).

Here A. (father and tenant-for-life) and B. (son and tenant-in-tail in remainder), both taking under a will DISENTAILED before May 19, 1853, and RESETTLED in exercise of a **joint power** of appointment—

To the use of A. for life,
Remainder to the use of B. for life,
Remainder to B.'s issue in tail male.

Here the disentailing deed and deed of appointment together constitute one disposition, the tenant-in-tail, B., being his own predecessor, and also the predecessor from whom the other persons taking under the disposition derive their successions.

PREDECESSOR—*continued.*

B., however, for the purposes of the Act, was held to take under the will, and to be liable to the same rate as would have been payable had no resettlement been made.

Attorney-General v. *Sibthorp*; *Attorney-General* v. *Smythe*; *Attorney-General* v. *Floyer*, to the same effect, see *post*.

Charlton *v.* Attorney-General (L. R. 4 App. Cas. 427).

Here A. (father and tenant-for-life) and B. (son and tenant-in-tail in remainder) DISENTAILED and RESETTLED in exercise of a **joint power** of appointment thus—

An annuity of £800 to B. during the joint lives of A. and B.,
And subject thereto to A. for life,
Remainder to B. (predeceased A.) for life,
Remainder to such uses as A. and C. (the second son) should jointly appoint.

The joint power was exercised thus—

£1700 per annum to D. (second wife of A.) in the event of her surviving A.,
£1000 per annum to E. (wife of C.) on the death of the survivor of A. and C.,
And subject thereto, in the events which happened, to F.

Held, that F.'s succession was **derived from B. as the donor of the power.** D. and E. also held to take successions derived from B. as predecessor.

In re Barker (7 Hurlst. & Norm. 109).

A. (*ob.* 1850) devised real estate to his wife B. (*ob.* 1859) for life, remainder as B. should appoint.

B. devised to C., niece to A., but stranger in blood to B.

Held, that as A. died before May 19, 1853, s. 4 did not apply, and C. took a succession derived from A. as predecessor.

Attorney-General *v.* Mitchell (6 Q. B. D. 548).

A. (*ob.* 1835) bequeathed personalty in favour of his daughters for life, and afterwards in favour of their children, and in default for such persons, and in such manner as they should, respectively, **by deed** appoint.

B., a daughter, exercised her general power of appointment by a deed poll in 1859 in favour of herself and husband successively for life, and in default of issue, to C. (niece to B.).

Held, that s. 4 did not apply, that the case fell under s. 2, and that C. took a succession derived **from A. (the donor of the power)**, as predecessor.

(*b*) **Where appointees are held to derive their interest from the donee of the power.**

S. 4 provides that persons exercising a GENERAL POWER of appointment are deemed to be entitled, at the time of their exercising the power, to the property or interest appointed as a succession from the **donor of the power.** (*a*)

(*a*) *Per* Earl Cairns (in *Charlton* v. *Attorney-General*, *supra*), "the words, 'where any person shall have a general power of appointment over property, he shall, in the event of his making any appointment thereunder, be deemed to be entitled, at the time of exercising such power, to the property or interest thereby appointed, as a succession derived from the

PREDECESSOR—*continued.*

As a consequence of the donee being so deemed entitled to the property appointed, the interest of the appointee must be considered as derived from such donee and not from the donor of the power.

Attorney-General *v.* **Upton (L. R. 1 Ex. 224).**

A. (*ob.* 1856) devised real estate to his wife (B.) for life, **remainder as she should appoint** (she appointed by deed to C.).

Remainders over in default of appointment.

C. was held to take a succession on the death of the wife derived from her (**the donee** of the power) as predecessor.

In re Wallop's Trusts (1 De G. Jo. & Sm. 656).

A., domiciled abroad, succeeded (after May 19, 1853) to an **absolute power of appointment** over personalty paid into Court by the trustees under the Trustee Relief Acts under her father's will, which power she exercised by will.

The appointees were held to derive their succession from A. (**the donee** of the power).

2. **Disentailing Deeds and Resettlements**—

A. (tenant-for-life) and B. (tenant-in-tail in remainder) **disentail and resettle** to such uses as they shall jointly appoint.

They appointed thus:—

(1) Annuity of £1000 to B. during joint lives of A. and B. and subject thereto to A. (*ob.* 1855), for life,

Remainder to B. for life, remainders over (**Attorney-General** *v.* **Sibthorp, 3 Hurlst. & Norm. 424**).

(2) To A. for life,

Remainder to B. for life,

Remainder to B.'s issue in tail male (**Lord Braybrooke** *v.* **Attorney-General, 9 Ho. Lds. Cas. 150**).

In (1) and (2) B., on A.'s death, succeeded as tenant-for-life under the resettlement, taking his succession **"under a disposition made by himself,"** but the original instrument creating the entail was referred to in order to ascertain the rate of duty with which he was chargeable (s. 12).

(3) To A. for life (*ob.* 1834),

Remainder to B. for life (*ob.* 1855 without issue),

Remainder to B.'s sons in tail male,

Remainder to C. (another son of A.) for life,

Remainder to C.'s sons in tail male.

Power to successive tenants-for-life when in possession to charge portions for younger children.

C. exercised this power in favour of children E. and F.

C. succeeded on B.'s death as tenant-for-life taking his succession as

donor of the power,' appear to me to point to a general power possessed by one person enabling him to dispose of property as an absolute owner and not to a power given in a FAMILY SETTLEMENT to a father and son where one is intended to be a check on the other in the exercise of the power."

Per Lord Selborne, *ibid.* 446. "The first branch of the section certainly points to that kind of absolute power which is practically equivalent to property, and which may reasonably be treated as property for the purpose of taxation. That is the case with a general power exercisable by a single person in any way which he may think fit; but it is not the case when a power cannot be exercised without the concurrence of two minds, the one donee having, and the other not having, an interest to be displaced by its exercise."

PREDECESSOR—*continued.*

derived from B. as predecessor. E. and F. also take their successions to the portions as derived from B.

C. and his son D. subsequently barred and resettled as they should jointly appoint.

They exercised their joint appointment thus—

They limited a term to trustees to pay £4000 per annum to D. for life in case he survived C. and subject thereto to C. (*ob.* 1856) for life, remainders over.

D. succeeded on C.'s death to the £4000 per annum **"under a disposition made by himself,"** and the disposition made by B. was referred to in order to ascertain the rate of duty with which he was chargeable (**Attorney-General** *v.* **Floyer, 9 Ho. Lds. Cas. 477**).

A. (tenant-for-life) and B. (tenant-in-tail in remainder) **disentail and resettle** to such uses as they shall jointly appoint, and in default of appointment to the old uses.

B. dies without issue.

A. and C. (the second son) **disentail, and,** subject to a jointure rent-charge to W. (widow of B.), **resettle** to such uses as they shall jointly appoint.

They exercised their joint power thus: To certain uses, by reason of which D., on the death of his father (A.) in 1856 (C. having died without issue in 1853), became tenant-for-life in possession.

Held, that D. took a succession derived either from B. or C. as predecessor, the rate of duty being the same in either case (**Attorney-General** *v.* **Smythe, 9 Ho. Lds. Cas. 497**).

See also *Charlton* v. *Attorney-General*, *ante*.

A. (a lunatic) was tenant-in-tail in possession of certain real estate with remainder to his younger brother (B.) and his sister (C.) successively in tail.

B. **barred his estate tail,** without the consent of the Lord Chancellor as protector, and mortgaged the base fee thus created for £124,000, a sum exceeding the fee simple value of the lands, so that he (B.) had no beneficial interest in the equity of redemption.

Subsequently, with the consent of the Lord Chancellor, as protector of the settlement, B., C., and the mortgagees executed deeds by which the land was conveyed to trustees in fee simple, subject to A.'s estate tail, but discharged from the mortgage and from B.'s equity of redemption, upon trust after the determination of A.'s estate to raise £37,000 to be paid to the mortgagees;

And subject thereto to the separate use of C. for life,

Remainder to her sons successively in tail male.

On A.'s death in 1868 C. became entitled in possession, and on her death in 1875 D. (her son) became tenant-in-tail in possession.

Held, that D. took his succession as derived from C. as predecessor, and not from his uncle (B.) (**Attorney-General** *v.* **Dowling, L. R. 6 Q. B. D. 177**).

3. **Joint Predecessors (s. 13).**

A. (tenant-for-life) and B. (tenant-in-tail in remainder) disentail and resettle to such uses as they shall **jointly appoint.** They appoint a

PREDECESSOR—*continued.*

rent-charge of £800 a year to C., wife of D., second son of A., in the event of her surviving her husband.

D. died in 1856, having survived A. and B., and C. was held to have derived her succession from both A. and B. as **joint predecessors (Floyer *v.* Bankes, 9 Jur. N.S. 1256).**

The official practice which now obtains is to make that person predecessor out of whose interest the succession **in the event** comes, and not, as formerly was the case, all those persons joint predecessors out of whose interest the succession might by possibility have come.

4. **Disposition by Purchaser for Valuable Consideration,** VENDOR joining.

"If a person purchase for valuable consideration the right to, and ownership in, property previously vested in another, and instead of taking a conveyance or assignment to himself, directs it to be settled in such a manner as to create a succession, the settlement must be considered as being in fact a disposition made by the purchaser so as to constitute him the sole predecessor from whom the interest of the successor is derived, although, in point of form, it purports to be made by him and the vendor jointly, or even by the vendor alone" (Hanson, 3rd ed. p. 248).

(1) **In re Jenkinson (24 Beav. 64).**

A. (tenant-for-life) and B. (tenant-in-tail in remainder) disentailed and resettled certain real estate to such uses as they should jointly appoint, and subject thereto to the uses previously subsisting. By a contemporaneous deed, in execution of the joint power, A. secured to B. an annuity of £2250 for life; and B. secured £25,000 to A., payable on B.'s coming into possession of the entailed property, £20,000 thereof being contemporaneously settled on A.'s daughters, and £5000 on A. (*ob.* 1855). On A.'s death the daughters were held to succeed to the £20,000 as derived from A. as predecessor, he having given consideration for the sum secured; the £5000, the remaining part thereof, being held to be a debt for valuable consideration from B. to A., payable after A.'s death, and within the exemption of s. 17.

(2) **Attorney-General *v.* Yelverton (7 Hurlst. & Norm. 306).**

A., tenant-for-life (*ob.* Feb. 1857) under a will of certain freeholds, with remainder to his first and other sons in tail male, remainder to B. for life (*ob.* Nov. 1857), remainder to her first and other sons in tail male, remainder to C. for life, remainder to his first son (D.) for life, concurred with the first tenant-in-tail *in esse* (D.) in disentailing and resettling the estate. D., for valuable consideration, charged his estate with £20,000 in favour of such persons as A. should appoint, and in default of appointment in favour of A. absolutely, and payable in an event which happened (Nov. 1857).

This sum A. appointed by deed in favour of his adopted children, C. (£14,000) and D. (£6000).

Held, that C. and D. took their succession as derived from A. under the disposition made by the deed, and that duty was payable at the rate of 10 per cent.

PREDECESSOR—*continued.*

(3) **Attorney-General** *v.* **Lord Eustace Cecil (L. R. 5 Ex. 263).**

A. (tenant-for-life) and B. (tenant-in-tail in remainder) disentailed and resettled certain real estates to such uses as they should jointly appoint.

They appointed trustees to raise £20,000 in favour of younger son, D.

A. dies in 1868 (B. having predeceased A.), whereupon it was held that D. succeeded to the £20,000 derived from B. as predecessor, and not as alienee of a part of B.'s succession (see s. 15).

(4) **Attorney-General** *v.* **Baker and Platt (4 Hurlst. & Norm. 19; 32 L. T. 280).**

A. dies intestate. B. (brother of A.), believing himself to be the sole next of kin, took out letters of administration to A.'s estate. C. (niece of A.) subsequently claimed to share in the estate. C. and her husband (D.), however, gave a release to B. in consideration of B.'s transferring £30,000 consols to trustees, to be settled upon them successively for life, and, after the death of the survivor, for their children as they should jointly appoint, and in default of children, for the survivor absolutely.

C. and D. appointed £2000, part of the settled fund, to E., one of their children.

Held, that on the death (after May 19, 1853) of the survivor of C. and D., that E. took **a succession derived from C. (the mother) as predecessor,** she having given valuable consideration in money's worth for the settlement in question.

(5) **In re Ramsay's Settlement (30 Beav. 75).**

A., in consideration of settlement made by his intended wife, B., settled £10,000 upon himself and B. successively for life, and in default of issue (which happened), upon the children of B. by her former marriage. B. settled £6000 upon similar trusts. B. survived A., and died in 1859.

Held, that the succession in **the £10,000 was derived from A.,** and that the settlement of said fund was not the less a settlement made by A. because it was made for valuable consideration.

(6) **Attorney-General** *v.* **Floyer (9 Ho. Lds. Cas. 477).**

In this case it was decided that portions appointed to younger children by their father, in pursuance of a power given to him by his son, were derived from the son as predecessor.

"The result of all the authorities, therefore, seems to be, that in order to constitute a person a predecessor in respect of property which is not strictly his own, he must become a purchaser of the *jus disponendi* for valuable consideration in money or money's worth; and that marriage, although in the eye of the law it constitutes a valuable consideration, is not a sufficient consideration for this purpose" (Hanson, 3rd ed. p. 251).

(7) **Attorney-General** *v.* **Maule (56 L. T. N. S. 611).**

An indenture of marriage settlement recited that A. (the father of the intended husband, B.) agreed to advance and give B. the sum of £6000, to be repaid in the event of the marriage not taking place. It was further recited that it was agreed between

PREDECESSOR—*continued.*

all the parties to the deed that certain persons (as trustees) should stand possessed of the £6000 upon trust for A. until the solemnization of the intended marriage, and if not solemnized before a certain day therein named, to transfer the same to A., and from and after the solemnization of the marriage upon trust to pay the income to B. for life;

Remainder to the wife (C.) should she survive;

Remainder to her children upon the same trusts.

On the death of B. duty was claimed on the succession of the widow (C.), as **derived from A. and not B. as predecessor,** and the decision was to that effect.

PRINCE EDWARD'S ISLAND.

Order in Council (Finance Act, 1894), not yet applied.

Death Duty Act: "An Act to provide for the payment of Succession Duty in certain cases" (57 Vict. c. 5).

Exemptions.

The Act does not apply—

1. To any estate the value of which, after payment of all debts and expenses of administration, does not exceed 3000 dols.
2. To property given, devised or bequeathed for religious, charitable or educational purposes within the province.
3. To property passing under a will, intestacy or otherwise, to or for the father, mother, husband, wife, child, grandchild, brother, sister, brother's child or sister's child, daughter-in-law or son-in-law of the deceased, where the value of the property of the deceased, after payment of all debts and expenses of administration, does not exceed 10,000 dols. in value.

Scale.

Value of Property Liable to Duty.	Rate of Duty per cent.
(*a*) Where the property of the deceased passes, either wholly or in part, to or for the father, mother, husband, wife, child, grandchild, brother, sister, brother's child or sister's child, daughter-in-law or son-in-law of the deceased, the same or so much thereof as so passes shall be subject, where the value of the property of the deceased, after payment of all debts and expenses aforesaid, exceeds 10,000 dols.	1½
Ditto ditto 50,000 dols.	2½
(*b*) Where the value of the property, after payment as aforesaid, exceeds 3000 dols., so much thereof as passes to or for the grandfather or grandmother, or any lineal ancestor of the deceased, except the father and mother, or to a brother or sister of the father or mother of the deceased, or any descendants of such last-mentioned brother or sister	2½
Any person in any other degree of collateral consanguinity, or any stranger in blood, save as aforesaid	7½

PRIORITY.

(*a*) Of Crown Debt, see "Bankruptcy."

(*b*) Of legacies, see "Abatement."

PRIVATE ACT OF PARLIAMENT.

In the case of land put into strict settlement, powers of leasing and other powers of dealing with the land, with a view to its due management, have been generally conferred by the settlement either on the tenant-for-life or the trustees. Formerly the necessary powers, where not conferred by the settlement itself, were sometimes obtained by a private Act of Parliament. The Settled Estates Act, 1877, however, substituted the sanction of the Court for the authority of Parliament, thereby facilitating the alienation of settled lands, and more recent legislation (the Settled Land Acts) have given more extensive powers of alienation, so as to render unnecessary, in general, the creation of express powers for the purpose in settlement of land.

PROBATE.

A probate is an instrument in writing under the seal of the Court, and signed by one of the registrars or district registrars, certifying that the last will and testament thereunto annexed of the testator named therein, has been "proved" and registered in a registry of the Probate Division, and that administration of the testator's personal estate has been granted to the executor named in the will, he having first sworn faithfully to administer the same and to exhibit an inventory and to render a true account thereof whenever required by law to so do. To the probate is annexed a transcript or verbatim copy of the contents of the will proved, engrossed on parchment, with a note of the amount under which the personal estate has been sworn.

The production of the probate is conclusive evidence in all Courts of the executor's title, and of the validity, and of the contents of the will.

Letters of administration are likewise conclusive evidence of the administrator's title.

Probate may be obtained in common form or in solemn form. In the former case the probate is revocable, in the latter case it is irrevocable, provided all the parties adversely affected by it have been parties or have been privies of the action in which it was decreed, and the judgment in that action has not been obtained by compromise, unsanctioned by the parties adversely affected, unless the existence of a will of a later date is discovered subsequently to the date of the decree (Tristram & Coote's "Probate Practice," 12th ed.).

Probate, as stated above, is evidence of the right which the executor derives from the will; but an executor is on the testator's death a complete executor to all purposes "but bringing of actions," which he may begin, but cannot proceed with beyond the point at which it is necessary to prove his title, and which can only be done by the production of the probate.

As to penalty incurred for administering the estate of a deceased person without taking out grant of probate or letters of administration within the period prescribed by law for the purpose, see "Penalty."

Probate and letters of administration now bear a certificate in lieu of Stamp Duty (s. 30 of 44 Vict. c. 12), and having such certificate "shall, for all purposes, be deemed to have been duly stamped in respect of the value stated in the certificate" (s. 26, sub-s. 3).

Where a person dies possessed of assets in England, Scotland, and Ireland, it is not now necessary to obtain three separate grants; but one grant [in either country] is sufficient, and by being "resealed" in the other countries is valid in the same way as if separate grants had been obtained, see "Resealing."

Probate may be dispensed with in certain cases, see "Exemptions."

As to second or subsequent grant, see "Freemark."

PROBATE—*continued.*

Probate insufficiently stamped not admissible in evidence (9 & 10 Will. 3, c. 25, s. 59; 55 Geo. 3, c. 184, s. 8).

Forms of affidavit of value, see "Forms."

Instructions for obtaining probate or administration without the intervention of a solicitor—

Application must in every case be made in person and not by letter, nor through an agent, whether paid or unpaid.

Application may in every case be made at the Principal Probate Registry, but the application may, if preferred, be made at the appropriate District Registry.

The applicant should bring with him the **Registrar's Certificate of the death** of the deceased, or an official certificate of burial, and the will, if there be one, and full details of the property and debts of the deceased. If there be no will, or no executor be appointed, or the executor will not act, two sureties must also attend and enter into a bond for the faithful administration of the estate, unless the whole personal estate does not exceed £50, or the husband is the applicant, when one surety only will be required.

Where the whole personal estate, without the deduction of debts or funeral expenses, does not exceed £500, application may, if preferred, be made at the appropriate Inland Revenue Office.

Where the deceased left no will, and his widow or any of his children apply for administration, they may, if the whole personal estate does not exceed £100, and they are residing at more than three miles' distance from any Probate Registry, make their application to the Registrar of the County Court within the district in which the deceased resided, instead of at the Probate Registry or the Inland Revenue Office.

In these cases the Registrar is required to afford assistance in obtaining the grant of administration by filling up and transmitting papers, etc., on payment of fees not exceeding five shillings for estates of or under £20 in value, and for estates above that amount, an additional shilling for every additional £10 or fraction of £10 beyond the first £20. See 36 & 37 Vict. c. 52, which is extended by 38 & 39 Vict. c. 27, to children of poor intestate widows.

List of Inland Revenue Offices.

BEDFORD—Bedford, Leighton Buzzard.
BERKS—Abingdon, Maidenhead, Reading, Windsor.
BRECON—Brecon, Builth.
BUCKINGHAM—Aylesbury.
CAMBRIDGE—Cambridge, Ely.
CARDIGAN—Aberayron, Aberystwith, Cardigan, Tregaron.
CARMARTHEN—Llandilo.
CARNARVON—Bangor, Pwllheli.
CHESTER—Birkenhead, Chester, Macclesfield.
CORNWALL—Launceston, Redruth, St. Austell, Truro, Wadebridge.
CUMBERLAND—Carlisle, Penrith, Whitehaven.
DENBIGH—Wrexham.
DERBY—Bakewell, Belper, Chapel-en-le-Frith, Chesterfield, Derby.
DEVON—Barnstaple, Bideford, Exeter, Honiton, Ilfracombe, North Tawton, Okehampton, Parracombe, Plymouth, South Molton, Tiverton, Totnes.
DORSET—Dorchester, Gillingham, Poole, Weymouth.
DURHAM—Darlington, Stockton, Sunderland, West Hartlepool.

PROBATE—*continued.*

ESSEX—Braintree, Chelmsford, Colchester, Halstead, Leytonstone, Romford, Saffron Walden, Stratford.

FLINT—Rhyl.

GLAMORGAN—Aberdare, Bridgend, Cardiff, Merthyr, Neath, Pontypridd, Swansea.

GLOUCESTER—Blakeney, Bristol, Cheltenham, Cirencester, Gloucester, Stroud, Wickwar.

HEREFORD—Hereford, Leominster, Presteign.

HERTFORD—Berkhampstead, Bishop Stortford, Hatfield, Hertford, High Barnet, Hitchin, St. Albans, Sawbridgeworth, Watford.

HUNTINGDON—Huntingdon.

ISLE OF WIGHT—Newport, Ryde.

KENT—Ashford, Canterbury, Dover, Gravesend, Greenwich, Lewisham, Maidstone, Orpington, Rochester, Tonbridge, Tunbridge Wells, Woolwich.

LANCASTER—Ashton-under-Lyne, Blackburn, Bolton, Burnley, Bury, Lancaster, Liverpool, Manchester, Oldham, Preston, Rochdale, Stockport, Stockton, Ulverstone, Warrington, Wavertree, Wigan.

LEICESTER—Leicester, Loughborough, Market Harborough, Melton Mowbray.

LINCOLN—Boston, Gainsborough, Grantham, Grimsby, Lincoln, Louth, Sleaford, Stamford.

MERIONETH—Corwen, Dolgelly.

MIDDLESEX—Acton, Enfield, Kilburn, Staines, Sudbury, Tottenham, Uxbridge.

MONMOUTH—Abergavenny, Chepstow, Monmouth, Newport.

MONTGOMERY—Llanidloes, Machynlleth, Newtown, Welshpool.

NORFOLK—Dereham, Lynn, Norwich, Thetford, Yarmouth.

NORTHAMPTON—Northampton, Peterborough, Wellingborough.

NORTHUMBERLAND—Alnwick, Newcastle-on-Tyne.

NOTTINGHAM—Mansfield, Newark, Nottingham, Worksop.

OXFORD—Banbury, Chipping Norton, Oxford, Witney.

PEMBROKE—Haverfordwest, Pembroke, Tenby.

RADNOR—Knighton.

SALOP—Bishop's Castle, Bridgnorth, Ludlow, Madeley, Newport, Oswestry, Shrewsbury, Wellington, Whitchurch.

SOMERSET—Bath, Bridgwater, Shepton Mallet, Taunton, Yeovil.

SOUTHAMPTON—Aldershot, Andover, Basingstoke, Bournemouth, Petersfield, Portsmouth, Southampton, Winchester.

STAFFORD—Bilston, Brierley Hill, Burton-on-Trent, Hanley, Lichfield, Newcastle-under-Lyme, Smethwick, Stafford, Tipton, Uttoxeter, Walsall, Wednesbury, West Bromwich, Wolverhampton.

SUFFOLK—Bury St. Edmunds, Ipswich, Stowmarket, Sudbury, Woodbridge.

SURREY—Chertsey, Croydon, Guildford, Kingston-on-Thames, Reigate.

SUSSEX—Arundel, Brighton, Chichester, Hastings, Lewes, Worthing.

WARWICK—Birmingham, Coventry, Leamington, Nuneaton, Stratford-on-Avon.

WESTMORELAND—Kendal.

WILTS—Chippenham, Devizes, Marlborough, Salisbury, Swindon, Trowbridge.

WORCESTER—Bromsgrove, Dudley, Evesham, Kidderminster, Malvern, Stourbridge, Worcester.

YORK—

EAST RIDING—Driffield, Hull.

NORTH RIDING—Bedale, Malton, Middlesborough, Scarborough, York.

WEST RIDING—Barnsley, Bradford, Dewsbury, Doncaster, Halifax, Huddersfield, Keighley, Leeds, Ripon, Selby, Sheffield, Tadcaster, Wakefield.

PROBATE—*continued.*

List of Probate Registries and their Districts.

Bangor, counties of Carnarvon and Anglesea.
Birmingham, county of Warwick, including the city of Coventry.
Blandford, county of Dorset, including the town of Poole.
Bodmin, county of Cornwall.
Bristol, Bristol and Bath present county courts districts.
Bury St. Edmunds, western division of the county of Suffolk.
Canterbury, east division of the county of Kent, including the city of Canterbury, and such of the Cinque Ports and their dependencies as are locally situate in the county of Kent.
Carlisle, counties of Cumberland and Westmoreland.
Carmarthen, counties of Cardigan, Carmarthen, including the town of Carmarthen, and Pembroke, including the town of Haverfordwest, with the deaneries of East and West Gower, in the county of Glamorgan.
Chester, the county and city of Chester.
Chichester, western division of the county of Sussex.
Derby, county of Derby.
Durham, county of Durham.
Exeter, county of Devon, including the city of Exeter.
Gloucester, county and city of Gloucester, except the present Bristol county court district.
Hereford, counties of Radnor, Brecknock, and Hereford.
Ipswich, eastern division of the county of Suffolk and north division of the county of Essex.
Lancaster, county of Lancaster, except the hundred of Salford and West Derby, and the city of Manchester.
Leicester, counties of Leicester and Rutland.
Lewes, eastern division of the county of Sussex, including such of the Cinque Ports and their dependencies as are locally situate in the county of Sussex.
Lichfield, county of Stafford, including the city of Lichfield.
Lincoln, county and city of Lincoln.
Liverpool, hundred of West Derby in Lancashire.
Llandaff, counties of Glamorgan (with the exception of the deaneries of East and West Gower) and Monmouth.
Manchester, city of Manchester and hundred of Salford.
Newcastle-upon-Tyne, county of Northumberland, including the towns and counties of Newcastle-on-Tyne and Berwick-upon-Tweed.
Northampton, the town of Northampton, county of Bedford, and southern division of Northamptonshire.
Norwich, county of Norfolk, including the city of Norwich.
Nottingham, county and city of Nottingham.
Oxford, counties of Oxford (including the University), Berks, and Bucks.
Peterborough, northern division of Northampton, and counties of Huntingdon and Cambridge, including the University of Cambridge.
St. Asaph, counties of Flint, Denbigh, and Merioneth.
Salisbury, county of Wilts.
Shrewsbury, counties of Salop and Montgomery.
Taunton, western division of the county of Somerset.
Wakefield, west riding of the county of York.
Wells, eastern division of the county of Somerset, except the present Bath county

PROBATE—*continued.*

court district, and the part of Somersetshire of the present Bristol county court district.

Winchester, county of Hants, including the town of Southampton and Isle of Wight.

Worcester, city and county of Worcester.

York, north and east ridings of the county of York, including the city of York and Ainstey, and the town and county of Kingston-upon-Hull.

PROBATE DUTY

Is an **ad valorem** Stamp Duty on the grant of probate or administration by virtue of which the **personal** property of the deceased in this country is realised and collected.

Its **incidence** depends upon the **local situation** of such property, the duty not being payable upon any assets of the deceased which are beyond the jurisdiction of the Court of Probate at the time when the right to the duty attaches (*Attorney-General* v. *Hope*, 1 Cr. Mee. & Rosc. 530).

The **amount** of the duty depends upon the **value** of the property, with accretions (*Partington* v. *Attorney-General*, L. R. 4 Eng. & Ir. H. L. App. 100) at the **date** of the grant, and is payable by means of stamps (*a*) and not in money. In cases of original grants in England and Ireland (*b*) the stamp is transferred from the grant itself to the affidavit of value required to be delivered by the person applying for such grant (**44 Vict. c. 12, s. 27**), a certificate (*c*) from the Court of the affidavit being duly stamped being substituted for the stamp on the grant.

The duty is not payable upon **real estate** (unless partnership realty or unless equitably converted in the deceased's lifetime), nor upon donations *mortis causâ* (*q.v.*), nor upon trust property, nor where the net (*d*) value of the assets within the Court's jurisdiction does not exceed £100 (*e*). The duty, however, attaches on everything which ultimately turns out to be personal property of the deceased (*f*).

Where the value of the **whole** personalty (English and foreign) without deduction of debts, etc. (even of mortgage debts secured on leaseholds or policies of assurance, where created by the deceased), **does not exceed £300**, and where the deceased died on or after June 1, 1881, a Stamp Duty of **30s.** only may be paid (s. 33), which payment shall be deemed to be in full satisfaction of any claim to Legacy or Succession Duty in respect of the personal estate to which the affidavit (or inventory) relates (s. 36).

The Probate Duties (*g*) now in force were imposed by **44 Vict. c. 12.**

Inventory Duty is in Scotland the equivalent of Probate Duty in England and Ireland, and confirmation is the ceremony corresponding to probate.

The Forms in use are "A.," "B.," "D.," Nos. 130, 131, 132.

1. Property liable to Probate Duty.

All moneys recoverable by an executor by virtue of a probate in whatever form recovered, whether through the agency of a Court of Equity or a Court of

(*a*) 44 Vict. c. 12, s. 26, sub-s. 2. See "Adhesive Stamps."

(*b*) In Scotland the transfer was made in 1808 (48 Geo. 3, c. 149).

(*c*) See "Certificate."

(*d*) "Net." Debts and funeral expenses may now be deducted in the first instance where deceased was domiciled in the United Kingdom (s. 28).

(*e*) See further "Exemptions."

(*f*) See *Lord* v. *Colvin*, Law Rep. 3 Eq. 737, p. 30; *Collingwood* v. *Row*, 5 W. R. 484, p. 29.

(*g*) As to the duties also granted by 55 Geo. 3, c. 184, and 43 Vict. c. 14, see "Scales of Duty."

PROBATE DUTY—*continued.*

Law, and whether by contract or recoverable in the nature of damages (*Attorney-General* v. *Brunning*, 8 H. L. C. 243); but not moneys recoverable under Lord Campbell's Act (9 & 10 Vict. c. 93), nor under the Employers' Liability Act (43 & 44 Vict. c. 42), and "where the assets are beyond the jurisdiction of the Court at the time when the right to the duty attaches duty is not payable thereon: when they are in England at the time when the duty attaches duty is payable," per Kelly, C.B., in *Attorney-General* v. *Pratt*, L. R. 9 Ex. 140.

For example—

1. Stock or funds (including Exchequer Bills) of the United Kingdom.
2. Stocks, funds, or bonds of FOREIGN countries, or of British Dependencies and Colonies transferable or saleable in the United Kingdom (*a*).
3. Proprietary shares or debentures of public companies (*b*).
4. Dividends and interest declared, received, and accrued due in respect of the above to the date of the affidavit (*c*).
5. Cash in the house and at the banker's (with any interest received up to the date of the grant).
6. Money out on MORTGAGE, bonds, bills, promissory notes, and other securities, with interest thereon to the date of the affidavit.
7. Book and other DEBTS.
8. Unpaid purchase-money of REAL and leasehold estate contracted in the lifetime of the deceased to be sold (*d*).
9. Deceased's interest in proceeds of sale of real estate directed to be sold by settlement or will of some other person whether actually sold or not (*d*).
10. Personal estate over which deceased had an absolute power of appointment (23 Vict. c. 15) (*e*).
11. Policies of insurance (with bonuses) on the life of deceased or on that of any other person (*f*).
12. Household goods, pictures, china, linen, apparel, books, plate, jewels, carriages, horses, etc. (*g*).
13. Stock-in-trade, live and dead farming-stock, implements of husbandry, etc. (*g*).
14. Goodwill of business and profits to the date of the affidavit.
15. SHIPS and shares of ships registered at ports in the United Kingdom (27 & 28 Vict. c. 56, s. 4) (*g*).
16. Deceased's share in PARTNERSHIP real and personal estate (*h*).

(*a*) *Attorney-General* v. *Bouwens*, 4 Mee. & W. 171.

(*b*) See *Attorney-General* v. *Higgins* (4 M. & W. 171); *Fernandes' Case* (L. R. 5 Ch. App. 314). See "Stocks and Shares."

(*c*) *Partington* v. *Attorney-General* (L. R. 4 Eng. & Ir. H. L. App. 100).

(*d*) See "Conversion."

(*e*) S. 5 of 23 Vict. c. 15 makes the duty a charge upon the property appointed. Probate Duty, however, is not chargeable upon money charged by testator on real estate in pursuance of a general power of appointment, the above Act (23 Vict. c. 15) only applying to personal or moveable estate.

(*f*) Where insured on the life of any person other than the deceased, a certificate from the secretary of the insurance office as to the surrender value should be annexed to the affidavit.

(*g*) Note that where sold in excess of the estimated value additional duty may be payable.

(*h*) See Partnership Act, 1890, 53 & 54 Vict. c. 39, s. 22. A partnership balance-sheet, signed by the surviving partners, should be annexed to the affidavit.

PROBATE DUTY—*continued.*

17. Leasehold property (*b*); (*a*).
18. Rents (*b*).
    i. Of deceased's real and leasehold property due prior to the death, but not received by the deceased.
    ii. Apportionment of rents of deceased's real (and leasehold) estate to the date of death.
    iii. Of deceased's leasehold property accrued since the death and apportionment of the rents to the date of affidavit.
19. Income (*b*),
    i. Accrued due but not received prior to the death arising from real and personal estate of which deceased was tenant-for-life or for any less period.
    ii. Apportionment of such income to date of death.
20. Deceased's reversionary interest in personalty under will or settlement expectant on death, or other future event (*c*).
21. Other personal estate not comprised under the above heads—

Property *in transitu* to this country at the date of the death (*d*).

Property on the high seas which may be dealt with by bill of lading in the United Kingdom, etc.

As to deductions against Probate Duty, see "Deductions."

As to payment of Probate Duty, see "Payment."

As to return of, or payment of additional Probate Duty, see "Rectification of Duty."

As to scales of Probate Duty, see "Scales of Duty."

As to exemptions from Probate Duty, see "Exemptions."

2. **Cases on the Probate Duty.**

(1) **The Value.**

Probate Duty is chargeable on the value of the property as it stands at the date of the grant (*Doe* d., *Richards* v. *Evans*, 10 Q. B. D. 476), with all interest accruing thereon up to said date (*Partington* v. *Attorney-General*, L. R. 4 H. L. 100). The stamp on the grant must be sufficient (*e*) to cover any sum sought to be recovered at law or in equity (*Hunt* v. *Stevens*, 3 Taunt. 113; *Carr* v. *Roberts*, 2 B. & Ad. 905; *Jones* v. *Howells*, 2 Hare, 342).

Duty, moreover, is payable under the will or intestacy of every person through whom it is necessary to make title to the property (*Partington* v. *Attorney-General*, *supra*).

(2) **Property Liable.**

(*a*) Generally.

See *Attorney-General* v. *Brunning* (*supra*).

(*a*) In filling up the Account No. 1 annexed to the affidavit, the property should be described, and, where unsold, the following particulars should be given:

Term unexpired at date of affidavit; gross rents where let, or, if not let, either the assessment to property tax, or gross (not rateable) assessment to poor rate.

The ground rent.

The nature and amount of the yearly outgoings paid by the lessee as owner.

(*b*) See Apportionment Act, 1870 (33 & 34 Vict. c. 35).

(*c*) *Lord* v. *Colvin* (L. R. 3 Eq. 737).

(*d*) *Attorney-General* v. *Pratt* (L. R. 9 Ex. 140).

(*e*) Probate, when granted, "justified the executors in administering the whole estate, and the insufficiency of the stamp (if proved) would not affect its validity, though, whilst insufficiently stamped its admissibility in evidence might be affected" (*Per* Hawkins, J., in *Attorney-General* v. *Smith* (1892) 2 Q. B. 296).

PROBATE DUTY—*continued.*

(*b*) CONVERTED REALTY.—Real estate contracted in the lifetime of the deceased to be sold (*Attorney-General* v. *Brunning*, 8 H. L. Cas. 243). Deceased's interest in proceeds of sale of real estate directed to be sold by settlement or will of some other person, whether actually sold or not (*Attorney-General* v. *Lomas*, L. R. 9 Ex. 29).

Where real estate is leased with an option to the lessee to PURCHASE within a specified time, and such option is exercised, the real estate is held to be converted as from the date of the lease and is therefore liable to both PROBATE and Legacy Duty (*Collingwood* v. *Row*, 5 W. R. 484). See "Conversion."

Partnership Real Estate.—Partnership realty, provided the surviving partner is within the jurisdiction of the Court of Probate, is, as being impressed with the character of personalty, liable to Probate Duty (*Forbes* v. *Steven*, L. R. 10 Eq. 178), and can only be reconverted by a binding agreement enforceable at law or in equity during the lifetime of the parties (*Attorney-General* v. *Hubbuck*, L. R. 13 Q. B. D. 275) (*a*). And see "Partnership."

(*c*) INVESTMENT OF A LUNATIC'S PERSONALTY IN LAND (*Attorney-General* v. *Marquess of Ailesbury*, 12 App. Cas. 672). See "Lunatic."

(*d*) PERSONALTY OVER WHICH DECEASED HAD AN ABSOLUTE POWER OF APPOINTMENT.—Prior to 23 & 24 Vict. c. 15, ss. 4 and 5, property of this description was not liable to PROBATE DUTY (*Platt* v. *Routh*, 6 M. & W. 756).

A., a married woman, died on Dec. 13, 1887, leaving her husband, B., and three children her surviving, having previously (Sept. 7, 1887) made a will in exercise of a power of appointment and appointed executors. The will did not purport to dispose of any other property. At her death she was entitled to separate personal estate, not included in the power. Probate of the will was granted under the amended Probate Rules of April, 1887, in the ordinary form without an exception or limitation.

Held, that the executors were trustees for B. (the husband) of the undisposed-of property, and that the Probate Duty and the costs connected with Probate ought to be apportioned rateably between the appointed and the undisposed-of property (*Lambert, In re, Stanton* v. *Lambert*, 39 Ch. D. 626).

(*e*) REVERSIONARY PROPERTY WHETHER ABSOLUTE OR CONTINGENT IS LIABLE (*Lord* v. *Colvin*, L. R. 3 Eq. 737).

(*f*) SHARES.—Shares in railway companies incorporated within the jurisdiction (*Attorney-General* v. *Higgins*, 2 Hurlst. & Norm. 339). Also shares in a company incorporated by royal charter with a

(*a*) "**The time when the death takes place** is the moment at which it has to be decided **whether the property in question is realty or personalty.** Whatever agreement is to affect the character impressed upon the property at this specific moment of time must be in the first place a binding agreement, and in the second place it must be an agreement which shall take effect at the moment of death. Let us take, first of all, something outside partnership altogether. Take the case of a man who can by his election **reimpose the character of realty upon land**, which, but for his election, would continue to be treated as personalty; **he must make that election by some act not subsequent to the death; he cannot leave a will which after he is dead is to decide what is to be the nature of his property** at the moment of his decease," *per* Bowen, L.J., in this case.

PROBATE DUTY—*continued.*

head office in England, although its business is chiefly carried on abroad (*e.g.* in India), *Fernandes' Case* (L. R. 5 Ch. App. 314).

(*g*) Miscellaneous Cases—

1. Estates *pur autre vie*, though applicable by law as personalty (see Wills Act), continue to be in fact realty, and are not liable to Probate Duty (*Chatfield* v. *Berchtoldt*, L. R. 7 Ch. App. 192).
2. Neither are the profits arising from lighthouse tolls (*Attorney-General* v. *Jones*, 3 Pri. 360).
3. Land tax when redeemed under 38 Geo. 3, c. 60, s. 99, is a perpetual annuity, and liable as personalty to Probate Duty (*Pigott* v. *Pigott*, L. R. 4 Eq. 549).
4. Where an annuity has been given to testator during the life of another person (who has survived the testator) the value of such annuity calculated on the life of the annuitant at the date of the grant with accretions from the death is a personal asset; and an annuity given to a man and his heirs, though it devolves like realty, is for all other purposes personalty (*Earl of Stafford* v. *Buckley*, 2 Ves. Sen. 171).
5. Property *in transitu* to this country at the time of the death is liable (*Wyckoff's Case*, 3 Swa. & Tris. 20; *Attorney-General* v. *Pratt*, L. R. 9 Ex. 140); as, in fact, is all property to which it is necessary to make title in this country in order to enable the representatives of a deceased person to receive and deal with it here.
6. Money belonging to a deceased person which remains charged upon his real estate is liable (*Swabey* v. *Swabey*, 15 Sim. 502).

(3) **Foreign Personalty.**

Stocks, funds, or bonds of foreign countries, or of British dependencies transferable in the United Kingdom, are liable to Probate Duty (*Attorney-General* v. *Bouwens*, 4 M. & W. 171; *Attorney-General* v. *Dimond*, 1 Cr. & Jer. 356; *Attorney-General* v. *Hope*, 1 Cr. M. & Rosc. 530).

See also *Pearse* v. *Pearse* (9 Sim. 430), and *Attorney-General* v. *Pratt* (L. R. 9 Ex. 140), "India."

(4) **Effect of s. 33 of the Wills Act (1 Vict. c. 26).**

A bequest to a deceased child (or other issue) of the testator, leaving issue to survive the testator, is liable to Stamp Duty under the child's will or intestacy, as if such child (or other issue) had survived the testator (*Perry's Executors* v. *The Queen*, L. R. 4 Ex. 5).

(5) **Duty Paid in Two Places—The Amount Returnable.**

Where a testator left property in each of the provinces of York and Canterbury, and probates were granted by the Ecclesiastical Courts in respect of property in their respective provinces, and a return of duty was demanded on account of debts (which had been paid indiscriminately out of the whole personalty), such debts must be apportioned according to the amount of the property in the respective jurisdictions (*Reg.* v. *Commissioners of Stamps and Taxes*, 9 Q. B. 637).

PROBATE DUTY—*continued.*

(6) **Affidavit of Value.**

(*a*) AFFIDAVIT OF APPLICANT NOT CONCLUSIVE.—In granting probate or letters of administration, the Court is not restricted to the oath of the applicant as to the value of the property, but may receive the oath of any competent person to that fact (*In Goods of De Angulo y Urruela*, L. R. 1 P. 598).

(*b*) WHERE EXECUTORS SWEAR UNDER DIFFERENT SUMS.—A testator died leaving executors A. and B. A. proved the will and swore the property (the amount of which depended on the result of a Chancery suit then pending) to be under a certain sum, and paid duty accordingly. B. was allowed to take probate, swearing the property under a smaller sum (*In Goods of Bell*, L. R. 2 P. 247).

(7) **Probate affected by subsequent Statute.**

A. died on Aug. 2, 1879, having previously made a will which his executors proceeded to prove, and on Sept. 13, 1879, paid £45, the amount of the duty then payable. A *caveat* being lodged by the next-of-kin, the will was not established until April 13, 1880. Meanwhile the duty payable on or after April 1, 1880, was increased by the 43 Vict. c. 14. *Held*, that the probate was liable to the increased duty (Joy, *In re Lalor* v. *Jones*, 5 L. R. Ir. 282).

(8) **Deductions against Probate Duty.** See "Deductions."

PROCEEDINGS AGAINST ACCOUNTABLE PARTIES.

1. If any person accountable for or chargeable with duty under the **Succession Duty** Act, or the **Legacy Duty** Act, required by the Commissioners of Inland Revenue *to deliver an account* under those Acts or any of them, makes default in doing so, the Commissioners may sue out of the Court of Exchequer a writ of summons commanding him to deliver an account and to pay the duty and the cost of the proceedings, or to show cause to the contrary; and on cause being shown, such order shall be made as seems just (28 & 29 Vict. c. 104, s. 55).
2. Where, in pursuance of the **Succession Duty** Act or the **Legacy Duty** Acts, the Commissioners of Inland Revenue *make an assessment of duty, and the duty is not paid*, and there is no notice of appeal against the assessment under section 50 of the Succession Duty Act, or of disputing the liability to assessment, the Commissioners may sue out of the Court of Exchequer a writ of summons commanding the person liable for the duty, or the owner of any property expressly charged therewith, to pay the duty payable by him and the cost of the proceedings, or to show cause to the contrary; and on cause being shown, such order shall be made as seems just (s. 56).
3. If any person takes possession of, and in any manner *administers*, any part of the personal estate of any person deceased, *without obtaining* **probate** *of his will or* **Letters of administration** *of his estate within six months after his decease or within two months after the termination of any suit* or dispute respecting the will or the right to letters of administration, if there is any such suit or dispute that is not ended within four months after the death, the Commissioners of Inland Revenue may sue out of the Court of Exchequer a writ of summons commanding the person so taking possession and administering as aforesaid, to deliver to the Commissioners an account of the estate of the deceased, and of its value, and to pay such duty as would have been payable if probate or administration had been obtained, and the costs of the proceedings,

PROCEEDINGS AGAINST ACCOUNTABLE PARTIES—*continued.*

or to show cause to the contrary, and on cause being shown, such order shall be made as seems just, and any such proceedings shall be a waiver of all penalties incurred in the premises by such person as aforesaid (s. 57).

4. As to Appeal (s. 59) see "Appeal."
5. Probate and Inventory Duty chargeable under 44 Vict. c. 12, and Temporary Estate Duty chargeable under 52 Vict. c. 7, are recoverable "by any of the ways or means now in force for the recovery of Probate, Legacy or Succession Duties" (44 Vict. c. 12, s. 40; 52 Vict. c. 7, s. 8 (i.)).
6. "The existing law and practice relating to any of the duties now leviable on or with reference to death shall, subject to the provisions of this Act and so far as the same are applicable, apply for the purposes of collection, **recovery**, and repayment of **Estate Duty**" (Finance Act, 1894, s. 8 (1)).

PROCEEDS OF REAL ESTATE.

Liability of, to Legacy Duty (45 Geo. 3, c. 28, s. 4; 8 & 9 Vict. c. 75, s. 4);
to Succession Duty (51 Vict. c. 8, s. 21);
to Account Stamp Duty (44 Vict. c. 12, s. 38);
to Temporary Estate Duty (52 Vict. c. 7);
to Probate Duty;

Unpaid purchase money of real estate contracted to be sold in the lifetime of the deceased, and proceeds of sale of real estate directed to be sold by settlement or will of some other person, whether actually sold or not, to which the deceased at his death is entitled, are liable to Probate Duty. See also "Conversion."

to Estate Duty (Finance Act, 1894, s. 1).

PROMISSORY NOTE.

The delivery of a promissory note payable to order, though not endorsed, may be a good *donatio mortis causâ* (*q.v.*).

The right to sue in respect of a promissory note cannot be bequeathed by a testator. Such right is in the executor (*Bishop* v. *Curtis*, 18 Q. B. 878).

Where a testator had accepted an offer for the conversion of Indian Government promissory notes to be registered in England, and probate of his will was granted before the conversion had been completed, it was held that Probate Duty was not payable as the executors could not sue on the notes in this country (*Pearse* v. *Pearse*, 9 Sim. 430).

However, bills drawn in India on a London bank are, if the deceased dies abroad before they reach England, assets in England and liable to Probate Duty (*Attorney-General* v. *Pratt*, L. R. 9 Ex. 140).

By the 23 Vict. c. 5, s. 1, Indian Government notes, on which interest is payable in London, and certain Indian Government promissory notes, are to be deemed *bona notabilia* in England.

"PROPERTY."

Succession Duty Act, 1853 (16 & 17 Vict. c. 51, s. 1).

In the construction and for the purposes of this Act—

The term "real property" shall include all freehold, copyhold, customary, leasehold and other hereditaments, and heritable property, whether corporeal or incorporeal, in Great Britain and Ireland, except money secured on heritable property in Scotland, and all estates in any such hereditaments;

"PROPERTY"—*continued.*

The term "personal property" shall not include leaseholds, but shall include money payable under any engagement, and money secured on heritable property in Scotland, and all other property not comprised in the preceding definition of real property;

The term "property" alone shall include real property and personal property.

Finance Act, 1894 (s. 22 (1 *f*, *g*, *h*)).

(*f*) The expression "property" includes real property and personal property and the proceeds of sale thereof respectively and any money or investment for the time being representing the proceeds of sale.

(*g*) The expression "agricultural property" means agricultural land, pasture and woodland, and also includes such cottages, farm buildings, farmhouses, and mansion houses (together with the lands occupied therewith) as are of a character appropriate to the property.

(*h*) The expression "settled property" means property comprised in a settlement.

Application to Scotland (s. 23 (8, 9)).

(8) The expression "personal property" means moveable property.

(9) The expression "real property" includes heritable property.

"PROPERTY PASSING" (Finance Act, 1894).

Estate Duty.

1. Estate Duty is, subject to express savings, by s. 1 of the Finance Act, 1894, to "be levied and paid upon the principal value . . . of **all property**, real or personal, settled or not settled, which **passes** on the death" of a person dying on or after Aug. 2, 1894.

Definition.

The expression "property passing on the death" includes property passing either immediately on the death or after any interval,* either certainly or contingently, and either originally or by way of substitutive limitation, and the expression "on the death" includes "at a period ascertainable only by reference to the death" (s. 22 (1, *l*)).

2. *What property is deemed to pass* (s. 2).

(1) Property passing † on the death of the deceased shall be deemed to include the property following, that is to say—

(*a*) Property of which the deceased was at the time of his death competent to dispose.

(*b*) Property in which the deceased or any other person had an interest ceasing on the death of the deceased, to the extent to which a benefit accrues or arises by the cesser of such interest; but

* For example, where there is a trust to accumulate for a certain number of years after the death. See "Accumulations."

† A gift *inter vivos* within twelve months of the death of the donor is held to constructively pass on his death.

Where A., tenant-for-life, of settled real estate, and B., remainderman in tail, disentail and resettle to pay an annuity to B. during their joint lives, and, subject thereto, to A. for life, remainder to B. for life, remainder over, Estate Duty is leviable on the **whole real estate**, without any deduction in respect of the annuity to B. See "Cowley Case."

"We think that no deduction can be allowed in respect of the value of these annuities, because they were not existing incumbrances at the moment of the passing of the property. It is true that the third Earl is not a gainer by the extinction of these annuities, because they were payable to him: they were charges for his benefit. But they did not affect the value of the **property passing**, and cannot be regarded as effecting a diminution of the income to which the interest of the second Earl extended," *per* Bruce, J., in this case.

"PROPERTY PASSING"—*continued.*

exclusive of property the interest in which of the deceased or other person was only an interest as holder of an office, or recipient of the benefits of a charity, or as a corporation sole.

(*c*) Property which would be required on the death of the deceased to be included in an account under s. 38 of the Customs and Inland Revenue Act, 1881, as amended by s. 11 of the Customs and Inland Revenue Act, 1889, if those sections were herein enacted and extended to real property as well as personal property, and the words "voluntary" and "voluntarily" and a reference to a "volunteer" were omitted therefrom.

(*d*) Any annuity or other interest purchased or provided by the deceased, either by himself alone or in concert or by arrangement with any other person, to the extent of the beneficial interest accruing or arising by survivorship or otherwise on the death of the deceased.

(2) Property passing on the death of the deceased when situate out of the United Kingdom shall be included only, if, under the law in force before the passing of this Act Legacy or Succession Duty is payable in respect thereof, or would be so payable but for the relationship of the person to whom it passes.

(3) Property passing on the death of the deceased shall not be deemed to include property held by the deceased as trustee for another person, under a disposition not made by the deceased or under a disposition made by the deceased more than twelve months before his death where possession and enjoyment of the property was *bonâ fide* assumed by the beneficiary immediately upon the creation of the trust and thenceforward retained to the entire exclusion of the deceased or of any benefit to him by contract or otherwise.

3. *What is not deemed to pass* (Finance Act, 1896, ss. 14, 15).

14. Where property is settled by a person on himself for life, and after his death on any other persons with an ultimate reversion of an absolute interest or absolute power of disposition to the settlor, the property shall **not be deemed** for the purpose of the principal act **to pass** to the settlor on the death of any such other person after the commencement of this part of this Act (July 1, 1896) by reason only that the settlor, being then in possession of the property as tenant-for-life, becomes, in consequence of such death, entitled to the immediate reversion, or acquires an absolute power to dispose of the whole property.

15.—(1) Where by a disposition of any property an interest is conferred on any person other than the disponer for the life of such person or determinable on his death, and such person enters into possession of the interest and thenceforward retains possession thereof to the entire exclusion of the disponer or of any benefit to him by contract or otherwise, and the only benefit which the disponer retains in the said property is subject to such life or determinable interest, and no other interest is created by the said disposition, then, on the death of such person after the commencement of this part of this Act (July 1, 1896), the property shall **not be deemed** for the purpose of the principal Act **to pass** by reason only of its reverter to the disponer in his lifetime.

"PROPERTY PASSING"—*continued.*

(2) Where by a disposition of any property any such interest as above in this section mentioned is conferred on two or more persons, either severally or jointly, or in succession, this section shall apply in like manner as where the interest is conferred on one person.

(3) Provided that the foregoing sub-sections shall not apply where such person or persons taking the said life or determinable interest had at any time prior to the disposition been himself or themselves competent to dispose of the said property.

(4) Where the deceased person was entitled by law to the rents and profits of real property (as defined by s. 1 of the Succession Duty Act, 1853) of his wife, and has died in her lifetime, such property shall not be deemed for the purpose of the principal Act to pass on his death by reason of her then becoming entitled to the property in virtue of her former interest.

Account Stamp Duty.

S 38 (2) c. of 44 Vict. c. 12 enacts that "any property passing (*a*) under any past or future voluntary settlement made by any person dying on or after such day (June 1, 1881), by deed or any other instrument not taking effect as a will, whereby an interest in such property for life, or any other period determinable by reference to death, is reserved either expressly or by implication to the settlor, or whereby the settlor may have reserved to himself the right, by the exercise of any power, to restore to himself, or to reclaim the absolute interest in such property."

PROPERTY TAX.

1. Where in estimating the value of a succession, the property-tax assessment (or the gross assessment to the poor) is carried out in the account as the annual value, rates (although paid by the successor), tithes, etc., cannot be taken as deductions.
2. The property tax itself cannot in any case be taken as a deduction in said account.

Where, however, accumulations of income are accounted for (form "No. 4"), the deduction is allowed.

PUBLIC HOUSE.

A Parliamentary paper issued showing the practice of the Inland Revenue Department in dealing for death duty purposes, with the interests of publicans, was accompanied by the following letter to the Treasury:—

"Inland Revenue Department, Somerset House, May 14, 1890.—May it please your Lordships,—We beg to enclose herewith, as desired by the Chancellor of the Exchequer, a memorandum we have prepared, in consultation with our Comptroller of Legacy and Succession Duties, setting forth the practice of this Department in dealing, for death duty purposes, with the various interests

(*a*) Therefore Account Stamp Duty (*q.v.*) is not payable in respect of property taken out of the settlement in the lifetime of the settlor, and handed over to the expectant owner in acceleration of his succession.

"*Passing Under.*"—This expression is comprehensive, and might fairly be used in respect not only of dispositions effected by the words of the instrument creating them, but of those effected by the subsequent execution of a power created by the instrument in question.

Property the right to direct the application of which is created by deed A, but the specific direction of which is effected by deed B, passes under (not by) deed A, *per* Wills, J., in *Attorney-General* v. *Chapman* (1891), 2 Q. B. 526, *post.*

PUBLIC HOUSE—*continued.*

connected with the sale of intoxicating liquors.—We are, etc., ALGERNON WEST, F. L. ROBINSON, S. G. OSBORNE."

1. On Death of Leaseholder Publican.—In the affidavit delivered by his executor of his assets he brings in the value of his lease and goodwill, generally combined, thus (say):—"Lease (40 years to run) and goodwill of the White Hart (London), £2000. Or (another case) lease (47 years to run) Greyhound Inn (country), £543; goodwill (separately estimated), £500; or (where no lease) goodwill of public-house, the North Star (country), £250. In each of these cases it is assumed that the licence will continue to be renewed." Without a licence there would be no goodwill.
2. On Death of Freeholder Publican.—Here nothing comes under tax for Probate Duty. But the annual value of the house is treated in the Succession Duty account as permanently enhanced by the licence, thus:—Property Tax Assessment: Freehold public-house, the Dun Cow (country), £46; freehold house and shop adjoining the above, with slaughter-house, £22. Another case—Freehold public-house, the Junction Inn (country), £18; five freehold houses adjoining the above, at for each £10 13*s*. The annual values are capitalized for the whole life of the successor, according to the tables annexed to the Succession Duty Act, 1853, on the presumption that the licence will so long endure.
3. On Death of Brewer (First Mortgagee of the Publican's Lease). A common case is that the brewer has lent to the publican leaseholder, who is bound by his lease to buy his beer from "the brewer," a sum of money (say) £12,000 on first mortgage of the publican's lease. On the brewer's death the £12,000 has to be brought into the affidavit of his assets at its full nominal amount, and the Probate Duty paid thereon. If the licence were withdrawn the £12,000 would be in jeopardy, and probably a considerable part of it would be lost, as the publican's personal covenant to pay is, generally speaking, of trifling value.
4. On Death of Distiller (Second Mortgagee of the Publican's Lease).—A common case is that the distiller has lent to the publican leaseholder a sum of money (say) £7000 on second mortgage of the lease, *i.e.* subject to the brewer's mortgage for £12,000. On the distiller's death the £7000 has to be brought into the affidavit of his assets at its full nominal amount, and the Probate Duty paid thereon. If the licence were withdrawn the £7000 would almost certainly be lost, for it is seldom that the lease of the house, apart from the licence and consequent goodwill, is worth even as much as the brewer's first mortgage.
5. On Death of Brewer (Owner of Freehold Public-houses).—Here nothing comes under tax for Probate Duty. But the annual value of the public-houses is treated in the Succession Duty account as permanently enhanced by the licences. Each public-house is entered in this account at the rent reserved by the lease, or, in the case of "tied" houses, at the property-tax assessment. The annual values are capitalized for the whole life of the successor, according to the tables annexed to the Succession Duty Act, 1853, on the presumption that the licences will so long endure.
6. On Death of Brewer (Owner of Leasehold Public-houses).—The brewer, owner of freehold public-houses, usually sub-lets them to tenants for terms of years of greater or less duration. Where the publican's lease or agreement is only from year to year, and, as sometimes happens, is determinable at three months' notice from his lessor (the brewer), obviously the publican's goodwill is very trifling. In such cases the real goodwill which attaches to the house is in the

PUBLIC HOUSE—*continued.*

brewer (the lessor). That goodwill is taken into consideration in estimating the value for Probate Duty of the brewer's leasehold public-houses. Here, again, it is assumed that the licences will continue.

PUR AUTRE VIE, ESTATE.

When liable to Legacy and Succession Duty, see "Autre vie, estate pur."

Estates *pur autre vie* in Ireland are liable to Probate Duty (54 Geo. 3, c. 92).

PURCHASE AND PURCHASER.

1. *Purchaser of a legacy, and liability for Legacy Duty.*

A purchaser from a legatee, who, being but the purchaser of a chose in action, stands simply in the situation of the legatee (*Jennings* v. *Bond*, 8 Ir. Eq. Rep. 755), takes the legacy subject to the duty (*Nisbett's Trustees* v. *Learmonth*, 8 Sco. Sess. Ca. 2nd Ser. 69), which duty is not an "incumbrance," but a Government charge (*Bliss* v. *Putnam*, 7 Beav. 40), and, therefore, on receiving the legacy without the deduction for the duty, the purchaser must pay over such duty to the revenue, or, if the executor be compelled to pay the duty, the purchaser must reimburse him (*Bryan* v. *Mansion*, 3 Jur. (N.S.) 473). The liability of a legatee (and therefore of a purchaser from a legatee) is, however, limited to the interest which he takes (*Attorney-General* v. *Giles*, 5 Hurl. & N. 255; *Hicks* v. *Keats*, 3 Beav. 141; *Wright* v. *Barnewell*, 13 Jur. 1041).

2. *Purchaser of expectant succession, and liability for Succession Duty.*

The purchaser of an expectant succession is, as between himself and the vendor, liable to pay the duty (*Cooper* v. *Trewby*, 28 Beav. 194; approved in *In re Langham's Contract*, C. A. 156; 60 L. J. Ch. 110), and is chargeable **at the same rate** as the expectant successor, but on his own (the purchaser's) life (*a*) (ss. 15 & 44 of 16 & 17 Vict. c. 51, see *infra*); and on the **principal value** where the purchaser is a corporation (*Solicitor-General* v. *Law Reversionary Interest Society*, L. R. 8 Ex. 233).

The purchaser from a mortgagee of an expectant succession pays duty as alienee.

Where expectant succession is sold

(i.) Under an order of the Court in an administration suit, the purchaser is treated as alienee;

(ii.) Under a direction in will of expectant successor (prior to 51 Vict. c. 8), see "Reversionary Interests, Alienation of."

Where real estate is subject to a legacy, the purchaser thereof is accountable for the duty thereon (45 Geo. 3, c. 28, s. 5).

Where real estate, charged with an annuity, is directed to be sold, and is purchased subject to the annuity, no duty is payable by the purchaser on the extinction of the annuity in respect of the increase of benefit thereby accruing; but where he predeceases the annuitant the subsequent extinction of the annuity may render further duty payable under his will (16 & 17 Vict. c. 51, s. 5).

Where real estate is sold under a direction in the will the purchaser is not liable for duty on the proceeds of sale, the duty being a charge on the purchase-money.

Where purchased from tenant-for-life and remainderman prior to May 19, 1853, no duty is payable by purchaser on the death of tenant-for-life after that date (s. 15 of 16 & 17 Vict. c. 51).

(*a*) Cf. *Attorney-General* v. *Mander*, 74 L. T. 103, "Leaseholds."

PURCHASE AND PURCHASER—*continued.*

S. 42 enacts *inter alia* that the successor may, notwithstanding the "charge of duty on his succession," exercise a power of sale, exchange, or partition over settled real property, and then the **duty is charged substitutively** upon the successor's interest in all **real property acquired in substitution** for the real property before comprised in the succession, and in the mean time upon his interest also in all moneys arising from the exercise of any such power and in all investments of such moneys.

Where leaseholds are sold, and the proceeds applied by the executor or administrator in the payment of debts, the purchaser is apparently not liable to see to the payment of the Succession Duty (Hanson, 3rd ed. p. 231).

A *bonâ fide* purchaser without notice under a title not appearing to confer a succession, is not subject to any duty (s. 52 of 16 & 17 Vict. c. 51). And now purchasers (and mortgagees) are exempted from liability to Succession Duty after a specified period (52 Vict. c. 7, s. 12 (1). See "Limitations."

Note that Succession Duty is only payable on succession to property by persons succeeding to estates by gratuitous title (the marriage consideration being treated as a gratuitous title). Conveyances by way of *bonâ fide* sale are not caught by the Succession Duty Act, so as to constitute the relation of predecessor and successor between the vendor and purchaser, see "Sale."

Where, however, the purchaser does not take a conveyance or assignment to himself, but directs a settlement of the property so as to create a succession, he is held to be the predecessor thereunder, being held to be the person by whom the disposition was in fact made, see "Sale."

Where Settled Real Estate is Sold (s. 42).

(1) Under a POWER in the settlement.

Dugdale *v.* Meadows (L. R. 9 Eq. 212; 6 Ch. App. 501).

B., an expectant tenant-in-tail of property subject to a jointure rent-charge, disentailed and resettled the same subject to the charge, and gave his trustees the usual POWER OF SALE and reinvestment.

After B. came into possession the trustees exercised the power of sale with the concurrence of the jointress (C.) who released her annuity. *Held*, that the charge of Succession Duty that would become payable on the extinction of the jointure was shifted by s. 42 from the lands sold to the purchase-money, or the lands in which said money might be reinvested, and therefore the purchaser could not require such claim to be commuted under the provisions of s. 41, "a distinction being apparently made between cases of this kind, and sales by absolute owners who may spend the money, leaving nothing for the Crown to proceed against (Hanson, 3rd ed. p. 287).

But see discussion of this case in Hanson, 4th ed. p. 705.

(2) Under Settled Estates Act, 1877.

Warner's Settled Estates, In re (17 Ch. D. 711).

A sale under the powers conferred by the Settled Estates Act, 1877, by virtue of the operation of s. 22 of the said Act has the effect of revoking the uses of the settlement, and by s. 42 of the Succession Duty Act, the duty is **shifted from the land sold to the purchase-money** or its investments, and the land in the hands of a purchaser is freed from Succession Duty. In this case the real estate was comprised in a settlement which contained no power of sale.

S. 44 of the Succession Duty Act, 1853, enacts *inter alia* that the following

PURCHASE AND PURCHASER—*continued.*

persons, besides the successor, shall be personally accountable to Her Majesty for the duty payable in respect of any succession, but to the extent only of the property or funds actually received or disposed of by them respectively after the time appointed for the commencement of this Act; that is to say, every trustee, guardian, committee, tutor or curator, or husband in whom respectively any property, or the management of any property, subject to such duty, shall be vested, **and every person in whom the same shall be vested by alienation or other derivative title at the time of the succession becoming an interest in possession.**

S. 15 of the Succession Duty Act, 1853, enacts *inter alia* that, where, at the time appointed for the commencement of this Act, any **reversionary property expectant on death shall be vested, by alienation** or other derivative title, in any person other than the person who shall have been originally entitled thereto under any such disposition or devolution as is mentioned in the second section of this Act, then the person in whom such property shall be so vested shall be chargeable with duty in respect thereof as a succession **at the same time and at the same rate** as the person so originally entitled would have been chargeable with if no such alienation had been made or derivative title created; and where, after the time appointed for the commencement of this Act, **any succession** shall, before the successor shall have become entitled thereto or to the income thereof in possession, have become **vested by alienation** or **by any title not conferring a new succession** in any other person, then the duty payable in respect thereof shall be paid **at the same rate and time** as the same would have been payable if no such alienation had been made or derivative title created.

S. 20 enacts *inter alia* that the duty imposed by this Act shall be paid at the time when the successor, or **any person in his right** or on his behalf, **shall become entitled** in possession to his succession, or to the receipt of the income and profits thereof.

3. *Purchaser and liability to Estate Duty.*

(*a*) Estate Duty shall not be payable in respect of property passing on the death of the deceased by reason only of a **bonâ fide purchase** from the person under whose disposition the property passes, nor in respect of the falling into possession of the reversion on any lease for lives, nor in respect of the determination of any annuity for lives, where such purchase was made, or such lease or annuity granted, for **full consideration in money or money's worth** paid to the vendor or grantor for his own use or benefit, or in the case of a lease for the use or benefit of any person for whom the grantor was a trustee.

Where any such purchase was made, or lease or annuity granted, for **partial consideration in money or money's worth** paid to the vendor or grantor for his own use or benefit or in the case of a lease for the use or benefit of any person for whom the grantor was a trustee, the value of the consideration shall be allowed as a deduction from the value of the property for the purpose of Estate Duty (s. 3 (1)).

A. *bonâ fide* sells Blackacre to B. for full consideration in money (say £1000); but reserves to himself a life interest therein, or an annuity issuing thereout.

Estate Duty is not payable in respect of the cesser of A.'s interest on his death on or after Aug. 2, 1894.

PURCHASE AND PURCHASER—*continued.*

(*b*) "A **bonâ fide purchaser** for valuable consideration without notice" is not liable to or accountable for Estate Duty (Finance Act, 1894, s. 8 (18)).

(*c*) A certificate purporting to be a discharge of the whole Estate Duty payable in respect of any property included in the certificate shall exonerate **a bonâ fide purchaser** for valuable consideration without notice, from the duty notwithstanding "fraud or failure to disclose material facts" (s. 11 (3, 4)).

(*d*) Where an interest in expectancy in any property has, before the commencement of this part of this Act, been **bonâ fide sold** or mortgaged for **full consideration in money or money's worth,** then no other duty on such property shall be payable by the **purchaser** or mortgagee when the interest falls into possession, than would have been payable if this Act had not passed; and in the case of a mortgage, any higher duty payable by the mortgagor shall rank as a charge subsequent to that of the mortgagee (s. 21 (3)).

(1) A. and B. are respectively tenant-for-life and remainderman in fee of certain real estate settled in 1890.

B. sells his interest in expectancy in 1893 to C. for (say) £8000, and the tenant-for-life (A.) dies on Jan. 1, 1896.

No Estate Duty, but Succession Duty at the higher rate according to the relationship of B. to the settlor, is payable by the alienee C.

(2) A. and B. are successive tenants-for-life and C. remainderman in fee, who sells to D. in 1893. A. dies Jan. 1, 1895. B. dies Jan. 1, 1896. Estate Duty is payable on A.'s death, which will clear the 1 per cent. or 1½ per cent. Succession Duty, and D. will take the property burdened with this Estate Duty, no further Estate Duty being payable on B.'s death.

(*e*) Personalty, including leaseholds, passes to the executor as such, who alone is accountable for the duty thereon, and the Estate Duty thereon not being a charge on the property, purchasers of leaseholds are therefore not liable (*Re Culverhouse* (1896), 2 Ch. 251).

4. The word "purchaser" has in law a meaning more extended than its ordinary sense: it means one who acquires land otherwise than by descent. Since the Inheritance Act (3 & 4 Will. 4, c. 106) descent is traced from the last "purchaser;" but under the old law it was traced from the person "last seized." Now, however, for a person to be considered as the stock of descent it is simply necessary to show (1) that he was entitled, and (2) that he did not inherit, without reference to the question whether he was actually possessed or not.

Q.

QUEBEC.

Date of Order in Council (Finance Act, 1894), Jan. 15, 1897.

Death Duty Acts: "An Act respecting Duties on Successions and Transfers of Property" (55 & 56 Vict. c. 17); "An Act to amend the Act 55 & 56 Vict. c. 17, intituled 'An Act respecting Duties on Successions and Transfers of

QUEBEC—*continued.*

Property'" (57 Vict. c. 16); "An Act to amend the Law respecting Duties on Successions and Transfers of Real Estate" (58 Vict. c. 16); "An Act to Amend the Law respecting Duties on Successions" (59 Vict. c. 17).

The duty is calculated on property (moveable and immoveable) transmitted by death, but a deduction is allowed of debts and charges existing at the death.

SCALE.

Successor.	Value of the whole Estate.	Rate of Duty per cent.
In direct line, ascending or descending, consorts, father or mother-in-law, or son or daughter-in-law of the deceased.	Does not exceed $3,000	Nil.
	Exceeds $3,000 {but does not exceed} $5,000	½ {on the excess (of the estate) beyond $3,000.}
	„ $5,000 „ $10,000	1 „
	„ $10,000 „ $50,000	1¼ „
	„ $50,000 „ $100,000	1½ „
	„ $100,000 „ $200,000	2 „
	„ $200,000	3 „
Brother or sister or descendants of brother or sister of the deceased.	In all cases	3
Brother or sister or descendant of brother or sister of the father or mother of the deceased person.	„	5
Brother or sister or descendant of brother or sister of the grandparents of the deceased.	„	6
Any other collateral relative.	„	8
Stranger.	„	10

QUEENSLAND.

Order in Council (Finance Act, 1894) not yet applied.

Death Duty Acts: "The Succession and Probate Duties Act, 1892" (56 Vict. No. 13); "The Succession and Probate Duties Act, 1892, Amendment Act, 1895" (59 Vict. No. 28).

The Probate Duty.	Rate of Duty per cent.
When the net value of the property of the deceased person in respect of which the Grant of Probate or Letters of Administration is made does not exceed £50	Nil.
Exceeds £50, but does not exceed £100	10s.
„ 100 „ „ 200	£1
„ 200 „ „ 500	2
„ 500	5

The duty on Letters of Administration is at double the rates for Probate.

QUEENSLAND—*continued.*

The Succession Duty.

	Rate of Duty per cent.
If the whole succession or successions derived from the same predecessor, and passing on the death of any person or persons amount in money or principal value to a sum less than £200	Nil.
Exceeding £200, but not exceeding £1,000	2
„ 1,000 „ 2,500	3
„ 2,500 „ 5,000	4
„ 5,000 „ 10,000	6
„ 10,000 „ 20,000	8
„ 20,000	10

The Succession Duty Act follows very closely the English Succession Duty Act, and the value for duty on real property follows the rules prescribed by the English Finance Act, 1894, s. 18, and the Succession Duty Act, 1853, s. 21.

Special Rates.

Wife, husband or lineal issue ..	One-half the above rates.
Strangers in blood	Double the above rates.

R.

RAILWAY COMPANY.

1. Shares in, are assets in the country in which the holder must be registered (*Attorney-General* v. *Higgins*, 2 Hurlst. & Norm. 339).
2. Liability to PROBATE Duty of American railway shares, the certificates of which are in this country at the death of the holder—

   Where the name of the holder appears on the face of the certificate as the registered owner of the shares, and the holder has not executed the form of transfer in blank at the back of the certificate by signing his name at the foot, the certificate is not capable of being sold by delivery in this country; but the representatives of the deceased before they can realize must send the certificate to the office in America, and obtain a fresh certificate made out in their names. In this case Probate Duty is not payable.

   If the name of the holder appears on the face of the certificate as the registered owner of the shares, and he has executed the form of transfer in blank at the back of the certificate by signing his name at the foot, the certificate becomes a transfer, and passes by delivery like a bond to bearer, and Probate Duty is payable.

   If the name of the holder does not appear on the face of the certificate, but the name of X., as registered owner, who has also executed the form of transfer in blank, the deceased must have held the certificate as a transferee by delivery, and his representatives, or any one else who obtains the certificate, can sell it on delivery only, like a bond to bearer, and Probate Duty is payable.

RATES.

1. Cannot be allowed as a deduction in estimating the value of a succession unless paid by the owner, and not even then where the property tax assessment, or the gross assessment to the poor, is given as the annual value.

RATES—*continued.*

2. The poor rate is levied under 43 Eliz. c. 2, on the occupier in each parish of "lands, houses, tithes, coal mines, or saleable underwoods," and The Rating Act, 1874, extends the liability to rates to
   (*a*) land used for a plantation or a wood, or for the growth of saleable underwood, and not subject to any right of common;
   (*b*) rights of fowling, shooting, taking or killing game or rabbits, and of fishing when severed from the occupation of the land; and
   (*c*) mines of every kind (*e.g.* iron mines) not mentioned in the Act of Elizabeth.

As between landlord and tenant rates are ordinarily paid by the tenant, but the rating of the landlord instead of the tenant is provided for by the Poor Rate Assessment and Collection Act, 1869, in cases where the rateable value does not exceed £20 in the Metropolis, or £13 in Liverpool, or £10 in Birmingham or Manchester, or £8 elsewhere if the vestry of the parish so order (Wharton's *Law Lexicon*).

RATES OF DUTY.

1. **Probate and Account Stamp Duty.** See "Scales of Duty."
2. **Legacy Duty** (55 Geo. 3, c. 184, Sch. Part III.).

Rates of Duty.

CHILDREN of the deceased, or their descendants, or the FATHER or MOTHER, or other LINEAL ANCESTOR of the deceased	£1 per cent.
BROTHERS and SISTERS of the deceased, or their descendants	£3 per cent.
BROTHERS and SISTERS of the FATHER or MOTHER of the deceased, or their descendants	£5 per cent.
BROTHERS and SISTERS of a GRANDFATHER or GRANDMOTHER of the deceased, or their descendants ..	£6 per cent.
Persons in any other degree of collateral consanguinity or STRANGERS IN BLOOD to the deceased	£10 per cent.

How to Describe Consanguinity of Legatee.

RELATIONSHIP.	DESCRIPTION.
Son, daughter	Child.
Grandson, granddaughter	Grandchild, or descendant of a child.
Nephew, niece	Descendant of a brother, or descendant of a sister.
Uncle	Brother of a father, or brother of a mother.
Aunt	Sister of a father, or sister of a mother.
First cousin	Descendant of a brother of father, or descendant of a brother of mother, and so on.
Second cousin	Descendant of a brother of grandfather, and so on.
Great uncle	Brother of a grandfather, or brother of a grandmother.
Great aunt	Sister of a grandfather, or sister of a grandmother.
Son-in-law, daughter-in-law	Husband of a daughter, wife of a son.
Step-father	Husband of mother.
Step-mother	Wife of father.
Brother-in-law	Husband of a sister.
Sister-in-law	Wife of a brother.

RATES OF DUTY—*continued.*

3. **Succession Duty** (16 & 17 Vict. c. 51, s. 10; 51 Vict. c. 8, s. 21 (additional rates)).

Rates of Duty.

Lineal issue or lineal ancestor of the predecessor ..	1 or 1½ per cent.
Brothers and sisters of the predecessor, and their descendants	3 or 4½ per cent.
Brothers and sisters of the father or mother of the predecessor, and their descendants	5 or 6½ per cent.
Brothers and sisters of a grandfather or grandmother of the predecessor, and their descendants	6 or 7½ per cent.
Persons in any other degree of collateral consanguinity, or strangers in blood to the predecessor	10 or 11½ per cent.

How to Describe Consanguinity of Successor.

Relationship.	Description.
Father, mother, grandfather, etc.	Lineal ancestor.
Son, daughter, grandson, etc. ..	Lineal issue.
Step-father (step-mother) ..	Husband (wife) of lineal ancestor.
Son-in-law, etc.	Husband of lineal issue.
Nephew, niece	Descendant of a brother, or descendant of a sister.
Uncle	Brother of father, or brother of mother.
Aunt	Sister of father, or sister of mother.
First cousin	Descendant of a brother of father, or descendant of a brother of mother, and so on.
Second cousin	Descendant of a brother of grandfather, and so on.
Great uncle	Brother of a grandfather, or brother of a grandmother.
Great aunt	Sister of a grandfather, or sister of a grandmother.
Brother-in-law	Husband of a sister.
Sister-in-law	Wife of a brother.

The **additional rates** (½ per cent. for lineals, 1½ for collaterals and strangers, making the new rates 1½, 4½, 6½, 7½, and 11½ per cent.) were imposed by s. 21 of 51 Vict. c. 8. They are levied in respect of **successions opening by a death on or after July 1, 1888,** but do not apply to leaseholds (held to include leaseholds for lives) nor to property upon which Account Stamp Duty or Probate Duty has been paid. And in practice it is held that where annuities charged on real estate, dowers, leases for lives, and terms determine by a death on or after July 1, 1888, and the original succession opened after May 19, 1853, but before July 1, 1888, the old rates (1, 3, 5, 6, and 10 per cent.) are chargeable. Legacies or moneys payable out of or arising from the sale and mortgage of real estate are liable to the higher rates imposed by s. 21 as successions to personalty where the person charging the land died on or after July 1, 1888.

As to exemption from additional rates of duty, see "Exemptions."

The liability to duty attaches immediately upon the succession being created, that is to say, so soon as the disposition takes effect, although the duty is not actually payable until the successor becomes entitled in possession; conse-

RATES OF DUTY—*continued.*

quently, the RATE of duty would appear to depend upon the relationship of the successor to the predecessor at the time of the creation of the succession, and apparently will not be altered by the successor being subsequently married to or divorced from a relation of the predecessor. But see s. 18 of 16 & 17 Vict. c. 51, which enacts, *inter alia*, that "no duty shall be payable under this Act . . . by any person, in respect of a succession, who, if the same were a legacy bequeathed to him by the predecessor would be exempted from the payment of duty in respect thereof under the Legacy Duty Acts." And see Hanson, 4th ed. p. 611.

In cases of alienation of expectant succession, **the alienee** pays Succession Duty on the value of his own life interest at **the rate of the alienor** (s. 15).

Where, at the time appointed for the commencement of this Act, any reversionary property expectant on death shall be **vested, by alienation or other derivative title,** in any person other than the person who shall have been originally entitled thereto under any such disposition or devolution as is mentioned in the second section of this Act, then **the person in whom such property shall be so vested** shall be chargeable with duty in respect thereof as a succession at the same time and **at the same rate** as the person so originally entitled would have been chargeable with if no such alienation had been made or derivative title created.

4. **Legacy and Succession Duty.**

The **husband or wife** of the {deceased testator or intestate / predecessor} is exempt from {Legacy Duty (55 Geo. 3, c. 184, sch. Part III.). / Succession Duty (16 & 17 Vict. c. 51, s. 18).}

A {legatee / successor} whose **husband or wife** is of nearer relationship to the {deceased testator / predecessor} is chargeable with {Legacy Duty / Succession Duty} at the rate at which such husband or wife would be chargeable (s. 11 of 16 & 17 Vict. c. 51) (*a*).

Relations of the husband or wife of the {deceased testator or intestate / predecessor} are, however, chargeable with {Legacy Duty at 10 per cent. / Succession Duty at 10 per cent. or 11½ per cent.}, unless chargeable at a lower rate by reason of their being related in blood to the predecessor.

Children of a marriage by deceased with his wife's sister are illegitimate and liable to {Legacy Duty at 10 per cent. / Succession Duty at 10 per cent. or 11½ per cent.}, unless the marriage took place prior to the passing of Lord Lyndhurst's Act (5 & 6 Will. 4, c. 54), before which date such a marriage was voidable by the parties, and was held to be legal if not invalidated during their lifetime.

As to the case of illegitimate children legitimated by a subsequent marriage, see "Illegitimacy."

Personalty on which Stamp Duty shall have been paid in conformity with the provisions of 44 Vict. c. 12 is by s. 41 of this Act **exempt** (*b*) from any {Legacy Duty / Succession Duty} where the {legatees / successors} are lineal issue or lineal ancestors

(*a*) The provisions of this section were, by a Treasury minute of June 3, 1857, made applicable to legacies which became payable after that date.

(*b*) Similarly exempt (and also real estate), where Estate Duty has been paid thereon (Finance Act, 1894, s. 1).

RATES OF DUTY—*continued.*

of the {deceased / predecessor}, and by s. 36 of the said Act, all {legatees / successors} of whatsoever consanguinity are exempt from {Legacy Duty / Succession Duty} in respect of the estate and effects on which the fixed Stamp Duty of 30s. has been paid in conformity with the provisions of s. 33. And by s. 16 (3) of the Finance Act, 1894, where the net value of the property, real and personal, in respect of which Estate Duty is payable of the deceased (dying on or after Aug. 2, 1894) does not exceed £1000, there is no Legacy or Succession (or settlement estate) Duty payable. See "Exemptions."

5. **Temporary Estate Duty.**

Where payable, one pound for every full sum of £100, and one pound for the fractional part of £100, above £10,000.

6. **Estate Duty** (Finance Act, 1894, s. 17).

Rates of Duty (*b*).

Where the Principal Value of the Estate						Estate Duty shall be payable at the rate per cent. of
	£				£	
Exceeds	100	and does not exceed			500	One pound.
„	500	„	„		1,000	Two pounds.
„	1,000	„	„		10,000	Three pounds.
„	10,000	„	„		25,000	Four pounds.
„	25,000	„	„		50,000	Four pounds ten shillings.
„	50,000	„	„		75,000	Five pounds.
„	75,000	„	„		100,000	Five pounds ten shillings.
„	100,000	„	„		150,000	Six pounds.
„	150,000	„	„		250,000	Six pounds ten shillings.
„	250,000	„	„		500,000	Seven pounds.
„	500,000	„	„		1,000,000	Seven pounds ten shillings.
„	1,000,000	-	-	-	-	Eight pounds.

The rate of the **Settlement Estate Duty** where the property is settled shall be 1 per cent.

Where the **gross value** of the property, real and personal, on which Estate Duty is payable on the death of the deceased, exclusive of property settled otherwise than by the will of the deceased, **exceeds £100**, but **does not exceed £300**, a fixed duty of **30s.** may be paid, and where it exceeds £300, but does not exceed £500, a fixed duty of 50s. may be paid (s. 16 (1)).

REAL PROPERTY (16 & 17 Vict. c. 15).

1. Not liable to **Probate** and **Account Stamp Duty**, which is only payable in respect of property, either personal in its nature or impressed with that character in equity: but it is liable to **Estate Duty** which is leviable on all property **real** or personal, free or settled, passing on a death on or after Aug. 2, 1894 (Finance Act, 1894, s. 1).
2. Where deceased dies possessed of property which at his death is realty at law but personalty in equity, the same is liable to both Probate and Legacy Duty.

(*b*) The rate is, of course, regulated by the total principal value of the aggregable properties; or of any particular "estate by itself," in the case of non-aggregable properties. See "Fractions, £10, £100." See also "Interests in Expectancy" as to rate payable where payment of Estate Duty is deferred until the interest falls into possession.

REAL PROPERTY—*continued.*

Otherwise, where the property is personalty at law but realty in equity. For example, where deceased dies entitled to money directed by the will or settlement of some other person to be invested in land. Here in the absence of reconversion the fund is not liable to Probate or Legacy Duty; but Succession Duty is payable (s. 30 of 16 & 17 Vict. c. 51). See "Conversion."

3. Is liable to **Succession Duty**, if situate in this country, though the owner die domiciled abroad.

For the purposes of the Succession Duty Act (**16 & 17 Vict. c. 51**), **real property** includes all freehold, copyhold, customary, leasehold, and other hereditaments, and heritable property, whether corporeal or incorporeal, in Great Britain and Ireland, except money secured on heritable property in Scotland, and all estates in any such hereditaments (s. 1).

4. **Directed by testator to be sold** (unless the proceeds are to be re-invested in land (*Heal* v. *Knight*, 8 Exch. Rep. 839, Note), and legacies or annuities payable thereout, liable to Legacy Duty (45 Geo. 3, c. 28, s. 4); or to Succession Duty at the higher rates (51 Vict. c. 8, s. 21), where testator died after July 1, 1888.

However, for the purposes of **s. 6 (8)** of the **Finance Act, 1894**, the property, though equitably converted by a direction to sell, will be treated as real property and not as personal property. Consequently unless actually sold within the year (s. 6 (8)) no interest will be charged on **Estate Duty** on such property until the expiration of a year from the death. On the other hand, no discount is allowed where paid at an earlier date.

5. **Value of Successions in "real property," how ascertained—**

I. *Death before Aug.* 2, 1894—

(*a*) Where property yields a fluctuating yearly income (s. 25), manors, mines, etc.

The "annual value" (s. 21) is calculated on an average to be agreed upon between the Commissioners and the successor, or the "annual value" is taken at 3 per cent. upon the principal value.

(*b*) Where the property yields an income not of a fluctuating character. Here the VALUE is the value of an annuity equal to the annual value of the property, and payable from the date of the successor's becoming entitled in possession, or to the receipt of the income during the residue of his life or any less term during which he may be entitled (s. 21), an allowance being made for "necessary outgoings" (s. 22), fines, etc. (s. 28), incumbrances (s. 34), property relinquished (s. 38, but see 52 Vict. c. 7, s. 10, sub-s. 1).

(*c*) Timber (s. 23). The duty is calculated on the net produce of the sale. Where proceeds in any one year do not exceed £10, no duty payable thereon.

(*d*) Advowsons (s. 24). No duty chargeable unless it or some right of presentation, or some interest in it, be sold, for money or money's worth, when duty is chargeable on the sum realized.

II. *Death on or after Aug.* 2, 1894.

The value is the **principal value** where the successor is competent to dispose, after deducting the Estate Duty payable in respect thereof on the said death, and the expenses if any properly incurred of raising and paying the same.

6. PARTNERSHIP realty (though situate abroad) is liable to Legacy Duty, and also to Stamp Duty (Probate or Account Duty), where within the jurisdiction of

REAL PROPERTY—*continued.*

the Court. See *Forbes* v. *Steven*, L. R. 10 Eq. 178; *Attorney-General* v. *Hubbuck*, 13 Q. B. D. 275. Also liable to Estate Duty. See "Partnership."

7. The following are (or have been held to be) realty:—

(*a*) Profits arising from the lighthouse tolls (*Attorney-General* v. *Jones*, 1 Mac. & Gord. 574).

(*b*) Shares (King's) and Adventurer's shares in the New River Company (*Davall* v. *The New River Company*, 3 De G. & S. 394).

Shares in the Aire and Calder Canal.

Shares in the Kennet and Avon Canal [original shares].

Shares in the Droitwich Canal.

Shares in the Bath Navigation.

Stands in the Leeds Cloth Hall.

Shares in the Leeds South Market.

Shares in the River Don Navigation.

Shares in the Avon Navigation.

Shares in the York Cemetery Company.

Shares in the Waterworks of Lyme Regis.

Shares in the Theatre Royal, Liverpool.

Shares in the Medway Navigation.

Shares in the Stock Exchange are deemed real estate; but are transmissible as personal estate, and as such liable to Probate Duty.

Shares in the Leeds Stock Exchange Buildings.

Shares, however, in the Chelsea Waterworks have been held to be personal estate (*Bligh* v. *Brent*, 2 Y. & C. 268).

Manchester Corporation Waterworks Annuities.

Now, however, canal and railway shares are made personal property by the Acts of Parliament under which the companies are incorporated, and by the express provision of the Companies Act, 1862 (s. 22), shares in companies constituted under that Act are declared to be personal estate.

8. Real property *situate abroad* is not liable to duty, nor any legacy or annuity charged thereon, nor the proceeds of sale thereof when directed to be sold, even though the testator dies domiciled in this country.

9. In accounting for and estimating the **principal value** of real property where deceased dies after Aug. 1, 1894 (Estate Duty, ss. 1 & 7 (5) and Succession Duty, ss. 18 & 7 (5) Finance Act, 1894), the following particulars should be given:—

I. (*a*) **Title**; whether—

i. *Free*,

or ii. *Settled*; and where settled the date and short material particulars of disposition, with date of any deed, and names of parties thereto, and name of any testator or intestate, and date of probate of his will or grant of administration.

The names and addresses of the beneficiaries should also be given, together with their relationship to the deceased, and, in case ii., to the predecessor from whom the property is derived.

(*b*) **Particulars of the property.**

1. Description, including situation, tenure, quantity, tenants' names, and nature of tenancy, and distinguishing between arable, meadow, pasture, orchards, gardens, woods, moors, commons, wastes, pleasure grounds, building land, etc.

REAL PROPERTY—*continued.*

2. Rental, if let, or gross (not rateable) value for the poor rate, if unlet and not assessed to property tax.
3. Value for property tax. State the **gross** assessment (and not the **reduced** assessment **for collection of Income Tax** under Finance Act, 1894, s. 35).
4. Nature and amount of deductions from the gross annual value.
5. Net annual value (deducted from 2, 3, 4) (*a*).
6. Estimated number of years' purchase (*b*).
7. Estimated principal value, or, where sold since the death, the **gross amount** realized.

(*c*) **Local situation and Tenure.**

The free property (for Estate Duty purposes) should (where deceased died on or after Jan. 1, 1898), see "Land Transfer Act," be subdivided into—

(*a*) Property (other than (*b*)) situate in—

i. England
ii. Scotland
iii. Ireland

} Real property over which the deceased exercised by will a general power of appointment should be distinguished from the other property under this heading.

(*b*) Land of copyhold tenure or customary freehold, where an admission or act by the lord of the manor is necessary to perfect the title of a purchaser from the customary tenant (real property under this heading over which deceased executed by will a general power of appointment should be separately distinguished).

(*c*) **Non-aggregable property.**

Where there are two or more separate "estates," statements should be annexed showing the gross and net value of each.

II. **Debts and Incumbrances.**

An account of the debts and incumbrances upon the real property which may be deducted (see Finance Act, 1894, s. 7, and title "Deductions") should also be given. The nature of the deduction from the gross principal value, and by whom the debt or incumbrance was created, should be stated; also short material particulars of the security should be given, with date of and names of parties to any deed, and name of any testator, and date of probate of his will; also the names and addresses of the persons to or in whom the debt or incumbrance is then due or vested. Where the debts on the **free** real property exceed the principal value thereof, and the deficiency is a property deduction for Estate Duty purposes against the **free** personalty, deduction of such deficiency may be taken.

RECEIPT.

Forms of receipt for legacies (Nos. 1, 11; 2, 12; 3). See "Forms in Use."

No legacy liable to duty to be paid without a receipt or discharge in writing for the

(*a*) If the real property include unlet fishing or sporting rights, church patronage, timber, unlet building land, mines, or other property which has no annual value, or the annual value whereof is no criterion of the principal value, full details should be given. Where the property is licensed it should be expressly so stated, and the particulars of the lease or other letting should be fully set out.

(*b*) As to agricultural property, see Finance Act, 1894, ss. 7 (5) & 22 (1 *g*) and title "Agricultural property."

RECEIPT—*continued.*

same, expressing the date, names of testator, testatrix, or intestate, and of the beneficiaries, amount or value of the legacy, and amount and rate of the duty (s. 27 of 36 Geo. 3, c. 52).

No written receipt or discharge received in evidence, or available in any manner, unless the same shall be stamped as required by the Act (s. 27).

Penalty of £10 per cent. for paying or receiving legacies without stamped receipts (s. 28).

Receipts to be stamped within twenty-one days after date (s. 29). See also 48 Geo. 3, c. 149, s. 44.

Receipts may be stamped after twenty-one days and within three months after date on payment of the duty, and 10 per cent. thereon by way of penalty. After three months, on payment of duty and 10 per cent. on the value of the property (s. 29).

Duly stamped receipts free from all other duties (s. 41).

RECONVERSION.

1. The Doctrine.

Although property directed or agreed to be converted (for example, land into money, or money into land) is considered as that species of property into which it is to be converted, yet it is open to a person receiving the converted property, if not under disability, to elect to take it in its original state.

Example.

A. devises land on trust to sell and pay the proceeds to B. The land is by such a direction converted into personalty. If B. dies before the sale his personal representative will take. But if B. before his death elects to take the land as it stands instead of having it sold, as he, as absolute owner, has a perfect right to do, he is held to have reconverted it, and in such a case his heir will take it on his death intestate (*Sisson* v. *Giles*, 11 W. R. 971).

2. Reconversion by express election.

(*a*) *By absolute owner.*

See above example. The onus of proof of reconversion will be on those who allege the reconversion.

(*b*) *By part owners.*

A part owner may reconvert in the case of money to be laid out in land; but in the case of land directed to be sold he *cannot reconvert independently* of the consent of the other part owners (*Seeley* v. *Jago*, 1 P. Wms. 389; *Holloway* v. *Radcliffe*, 23 Beav. 163).

(*c*) *By lunatics and infants.*

A lunatic cannot elect, neither can an infant; but in some cases, where it has been manifestly for his benefit, the Court has elected for him, and in either case the Court may direct an inquiry as to whether it is for the benefit of the lunatic or infant to reconvert.

The reconversion when made will apparently be without prejudice to the diverse rights of the real and personal representatives of the infant or lunatic (*Robinson* v. *Robinson*, 19 Beav. 494).

Under the Lunacy Act, 1890, a lunatic's property may be sold, but the unapplied proceeds will devolve as real estate.

(*d*) *By married woman.*

A married woman, with respect to her separate estate, is regarded as

RECONVERSION—*continued.*

sui juris and competent to elect. Since 1833 she has been able to reconvert money impressed with the character of land or land directed to be sold, by a deed acknowledged under the FINES AND RECOVERIES ACT (3 & 4 Will. 4, c. 74), s. 77; and since 1882 can reconvert without an acknowledged deed and just as if a *feme sole* (*Sharpe* v. *St. Sauveur*, L. R. 7 Ch. 343; *Quaede's Trusts*, 54 L. J. Ch. 786).

(*e*) *By remaindermen.*

A remainderman cannot elect so as to bind the interests of those entitled in priority to him, *e.g.* where money is directed to be laid out in land to be settled on B. for life and after his death on C. in fee, C. cannot elect to take the property as money. B. is entitled to have the money laid out in land (*Sisson* v. *Giles*, 11 W. R. 971; and see *Walrond* v. *Rosslyn*, 11 Ch. D. 640). C., however, can declare that on B.'s death the land then coming to him should be considered as money, and in that case, should he predecease B., C.'s personal representatives would take (*Cookson* v. *Cookson*, 12 Cl. & F. 121).

(*f*) *By tenant in tail.*

Where money is directed to be invested in land to be settled in tail it is by the Fines and Recoveries Act, for the purposes of the Act, to be treated just as the lands to be purchased would be treated, and to be considered subject to the same estates as the lands to be purchased would, if purchased, have been actually subject to.

Here the tenant-in-tail, though he could not prejudice the rights of the remaindermen (*Trafford* v. *Boehm*, 3 Atk. 440), might as against his issue elect to take as money (*Benson* v. *Benson*, 1 P. Wms. 130).

(*g*) *By contingent owner.*

A person contingently entitled to the proceeds of real estate directed to be sold, may, pending the contingency, elect to take the estate as realty, and such election will become operative upon the contingency happening before or upon his death (*Meek* v. *Devenish*, 25 W. R. 688).

Implied reconversion.

Implied from the language of the will.

Where money agreed to be laid out in land is described in the will as "money" this amounts to an election to reconvert (*Pulteney* v. *Darlington*, 1 Bro. C. C. 237).

Similarly a devise of land (where a sale has been directed) as "land" amounts to an election to reconvert (*Sharpe* v. *St. Sauveur*, *supra*).

Implied from acts or conduct.

Land into money—slight circumstances suffice to reconvert.

Land is directed to be sold and the proceeds paid to B., an election to reconvert is implied where—

(*a*) B. keeps the land unsold for a long time (*Dixon* v. *Gayfere*, 17 Beav. 433);

(*b*) B. grants a lease thereof reserving rent to himself, his heirs and assigns (*Crabtree* v. *Bramble*, 3 Atk. 680).

Money into Land—slight circumstances are not sufficient to reconvert.

Absolute receipt of the money reconverts (*Trafford* v. *Boehm*, 3 Atk. 440).

Not, however, the mere receipt of the interest of the money (*Gillies* v. *Longlands*, 4 De G. & S. 372; *Re Pedder's Settlement*, 5 De G. M. & G. 890; see also *Cookson* v. *Cookson*, 12 Cl. & F. 121). In this latter case money

RECONVERSION—*continued.*

was directed to be laid out in land to be settled on A. and B. successively for life, with ultimate limitations to A.'s right heirs.

Some of the money was laid out in PERSONAL SECURITIES and A. died.

It was held that he elected to reconvert.

3. **Reconversion by operation of law.**

Here the law presumes a reconversion from the mere circumstances of the case. It arises where property directed to be converted comes unconverted into the *possession of the person absolutely entitled*, and he *dies without making any declaration* concerning it.

Where in fact the *obligation* to convert and the *right* to call for the conversion both become centred in the same person, the effect of the conversion ceases.

For example, where money, by marriage articles, was covenanted to be advanced by A. three years after marriage to be laid out in land, and settled on himself, his wife B., and their issue, with remainder to his own right heirs, and B., within a year of the marriage, died childless, A. surviving his wife three days, it was held that the "money, though once bound by the articles, became free again when the wife died without issue." Here the money was "*at home*" for three days only, and A. "*died and made no sign about it*" (*Chichester* v. *Bickerstaffe*, 2 Vern, 295; see also *Pulteney* v. *Darlington* (*supra*)).

The ONUS of proving a RECONVERSION will be on those who allege it (*Sisson* v. *Giles*, 11 W. R. 971; *Benson* v. *Benson*, 1 P. Wms. 130).

RECTIFICATION OF DUTY.

1. **Probate Duty.**

i. *Grant taken out before June* 1, 1881 (*a*).

Where owing to any misapprehension as to the value of the property or otherwise, too much or too little duty has been paid in the first instance, the Commissioners, upon receiving an affidavit of the facts WITHIN SIX CALENDAR MONTHS after they have been discovered, are empowered by s. 40 (*b*) of **55 Geo. 3, c. 184**, to return the overpaid duty, and by s. 41 (*b*), to receive the deficient duty, and in either case to rectify the

(*a*) The corrected duty is regulated by the old scales, 55 Geo. 3, c. 184; 43 Vict. c. 14. See "Scales of Duty."

(*b*) And be it further enacted, That from and after the passing of this Act, where any person on applying for the probate of a will or letters of administration shall have estimated the estate and effects of the deceased to be of **greater value** than the same shall have afterwards proved to be, and shall in consequence have **paid too high a Stamp Duty** thereon, if such person shall produce the probate or letters of administration to the said Commissioners of Stamps **within six calendar months** after the true value of the estate and effects shall have been ascertained, and it shall be discovered that too high a duty was first paid on the probate or letters of administration, and shall deliver to them a particular inventory and account, and valuation of the estate and effects of the deceased, verified by an affidavit, or solemn affirmation in the case of Quakers; and if it should thereupon satisfactorily appear to the said Commissioners that a greater Stamp Duty was paid on the probate or letters of administration than the law required, it shall be lawful for the said Commissioners to cancel or expunge the stamp on the probate or letters of administration, and to substitute another stamp for denoting the duty which ought to have been paid thereon, and to make an allowance for the difference between them, as in the cases of spoiled stamps, or, if the difference be considerable, to repay the same in money, at the discretion of the said Commissioners (s. 40).

Repealed by the Statute Law Revision Act, 1890, *except as to grants, etc., obtained before* June 1, 1881.

And be it further enacted, That from and after the passing of this Act, where any person, on applying for the probate of a will or letters of administration, shall have estimated the estate and effects of the deceased to be of less value than the same shall

RECTIFICATION OF DUTY—*continued.*

stamp. By s. 51 (superseded by s. 23 of **5 & 6 Vict. c. 79** (*a*), which requires the payment of the debts to be proved "by oaths and proper vouchers") the Commissioners are empowered to make a return of duty (if claimed **within three years**, after the grant, or within such further period as the Commissioners may allow), in respect of so much of the property as is actually applied in the payment of debts "due and owing from the deceased, and payable by law out of his personal estate."

Forms:—0160 (*b*); 131 (*c*); 132 (*d*). The Forms 131 and 132 must be presented personally or by an agent, and not sent through the post; but Form 0160 may be where the applicant resides OUTSIDE the METROPOLITAN POSTAL DISTRICT.

have afterwards proved to be, and **shall in consequence have paid too little Stamp Duty thereon**, it shall be lawful for the said Commissioners of Stamps, on delivery to them of an affidavit or solemn affirmation of the value of the estate and effects of the deceased, to cause the probate or letters of administration to be duly stamped on payment of the full duty which ought to have been originally paid thereon in respect of such value, and of the **further sum or penalty payable by law for stamping deeds** after the execution thereof, **without any deduction or allowance of the Stamp Duty originally paid** on such probate or letters of administration: Provided always, that if the application shall be made **within six calendar months** after the true value of the estate and effects shall be ascertained, and it shall be discovered that too little duty was at first paid on the probate or letters of administration, and if it shall appear by affidavit or solemn affirmation to the satisfaction of the said Commissioners that such duty was paid in consequence of any **mistake** or misapprehension, or of its not being known at the time that some particular part of the estate and effects belonged to the deceased, and without any intention of fraud, or to delay the payment of the full and proper duty, then it shall be lawful for the said Commissioners **to remit the before-mentioned penalty**, and to cause the probate or letters of administration to be duly stamped, on payment only of the sum which shall be wanting to make up the duty which ought to have been at first paid thereon (s. 41).

(*a*) And whereas by the said recited Act of the fifty-fifth year of the reign of King George the Third, the Commissioners of the Treasury are authorized to allow time for making claims for **a return of Stamp Duty** paid upon probates of wills and letters of administration in cases where an executor or administrator hath paid debts out of the personal or moveable estate of any deceased person, and it is expedient to authorize the Commissioners of Stamps and Taxes to allow time for making such claims; be it therefore enacted, That where it shall be proved by oath and proper vouchers, to the satisfaction of the said Commissioners of Stamps and Taxes, that an executor or administrator hath paid **debts due and owing from the deceased, and payable by law out of his or her personal or moveable estate**, to such an amount as, being deducted from the amount or value of the estate and effects of the deceased for or in respect of which a probate or letters of administration shall have been granted in England after the thirty-first day of August, one thousand eight hundred and fifteen, or which shall be included in any inventory duly exhibited and recorded after that day in a Commissary Court in Scotland, shall reduce the same to a sum which, if it had been the whole gross amount or value of such estate or effects, would have occasioned a less Stamp Duty to be paid on such probate or letters of administration or inventory than shall have been actually paid thereon, it shall be lawful for the said Commissioners of Stamps and Taxes and they are hereby required to return the difference, provided the same shall be claimed within three years after the date of such probate or letters of administration, or the recording of such inventory as aforesaid; but where, by reason of any proceeding at law or in equity, the debts due from the deceased shall not have been ascertained and paid, or the effects of the deceased shall not have been recovered and made available, and in consequence thereof the executor or administrator shall be prevented from claiming such return of duty as aforesaid within the said term of three years, it shall be lawful for the said Commissioners of Stamps and Taxes to allow such further time for making the claim as may appear to them to be reasonable under the circumstances of the case (s. 23).

Repealed by the Statute Law Revision Act, 1890, *except as to grants, etc., obtained before* June 1, 1881.

(*b*) For payment of additional duty.

(*c*) For return of duty on ground of over-estimate.

(*d*) For return on the ground of debts.

RECTIFICATION OF DUTY—*continued.*

ii. *Grant taken out on or after June* 1, 1881.

Application should be made in the first instance at the Legacy and Succession Duty Office by the executors or administrators in person, or by their agent, and an affidavit on the printed form stating the circumstances of the case made before a Commissioner for Oaths, or by the executors or administrators in person at the Legacy and Succession Duty Office, must be delivered there with the probate or letters of administration (*a*).

1. Where **too little duty** has been paid (Form "D").

The affidavit may be sent through the POST if the person making the application resides outside the Metropolitan Postal District. The application should be made **within six calendar months** after the true value of the effects is ascertained, and it is discovered that too little duty is paid, in default whereof a liability to pay DOUBLE the amount of the duty chargeable will be incurred (ss. 32 and 40 of **44 Vict. c. 12**) (*b*). After examination the affidavit must be duly stamped for the amount which with the duty, if any, previously paid will be sufficient to cover the duty properly payable. A deduction may be taken in such affidavit of debts and funeral expenses not previously deducted, but no allowance can be made for the Stamp Duty of 30s. on estates exceeding £300 (s. 35). In cases of letters of administration, with or without the will annexed, the affidavit must be accompanied by a certificate from the proper officer of the Probate Court that the administrators have given further security for the due administration of the estate (55 Geo. 3, c. 184, s. 42). The corrective affidavit should be deposed to by the "person acting in the administration" of the estate

(*a*) Where the net estate, in respect of which a grant was issued on or after June 1, 1889, exceeds or did exceed the value of £10,000, there must be presented, together with the affidavit, a corrective statement properly filled up under the provisions of the 52 Vict. c. 7, s. 5; but see "Temporary Estate Duty."

(*b*) If at any time it shall be discovered that the personal estate and effects of the deceased were at the time of the grant of Probate or Letters of Administration of greater value than the value mentioned in the certificate, or that any deduction for debts or funeral expenses was made erroneously, the **person acting in the administration** of such estate and effects shall, **within six months** after the discovery, deliver a further affidavit with an account to the Commissioners of Inland Revenue, duly stamped, for the amount which, with the duty (if any) previously paid on an affidavit in respect of such estate and effects, shall be sufficient to cover the duty chargeable according to the true value thereof, and shall at the same time pay to the said Commissioners interest upon such amount at the rate of five pounds per centum per annum from the date of the grant, or from such subsequent date as the said Commissioners may, in the circumstances, think proper.

The Commissioners of Inland Revenue, upon the receipt of such affidavit duly stamped as aforesaid, shall cause a certificate to be written by an authorized officer on the Probate or Letters of Administration, setting forth the true value of the estate and effects as then ascertained, or as the case may be, the corrected amount of deduction, and such certificate shall be substituted for and have the same force and effect as the certificate of the officer of the Court (s. 32).

If any person who ought to obtain probate or letters of administration or deliver a further affidavit or to exhibit an inventory or who is required to deliver such account as aforesaid shall neglect to do so within the period prescribed by law for the purpose, he shall be liable to pay to Her Majesty double the amount of duty chargeable, and the same shall be a debt due from him to the Crown, and be recoverable by any of the ways or means now in force for the recovery of probate, legacy, or succession duties (s. 40).

RECTIFICATION OF DUTY—*continued.*

(s. 32). *Attorney-General* v. *Smith* ((1892), 2 Q. B. 289; (1893), 1 Q. B. 239).

INTEREST upon the amount of the duty on such affidavit at the rate of 5 per cent. per annum from the date of the grant, or from such subsequent date as the Commissioners may, in the circumstances, think fit, must also be paid (*a*). The necessary certificate will be written on the grant on the payment of the additional duty and interest as assessed.

2. Where **too much duty** has been paid (Form "D").

The affidavit must be made PERSONALLY or by agent at the Legacy and Succession Duty Office.

The affidavit may be made at any time during the administration where a return of duty is claimed on the ground of **over-estimate** of value of the effects (s. 31 of 44 Vict. c. 12) (*b*).

Where, however, a return of duty is claimed on the ground of **debts** and funeral expenses, the application must be made within **three years** after the grant, or within such further period as the Commissioners may allow (s. 31) (*b*).

Upon the claim being established and all duties then due having been paid, the warrant for the return of the overpaid Probate (and Estate) Duty will then be issued.

See further "Deductions" (Probate Duty).

2. **Temporary Estate Duty.** Form "G."

3. **Account Stamp Duty.**

Payment of Additional Duty. Form "C."
Return of Duty. Form "H."

4. **Legacy Duty** (36 Geo. 3, c. 52). Form "H."

The value of an annuity determinable on any contingency other than death is to be calculated without regard to such contingency, subject to repayment on the happening of the contingency of the difference between the duty paid and that which would have been payable on the annuity for the time it actually endured (s. 8).

Example.

i. ANNUITY OF £200—

(*a*) To B. for life or till remarriage.

(*b*) To C. for life, to be reduced to £100 a year on remarriage.

These are examples of an annuity subject to a contingency (ss. 8 and 17). In each case the value of the annuitant's life-interest is ascertained

(*a*) Three per cent. interest only is now payable. See Finance Act, 1896, s. 18 (2).

(*b*) If at any time after the grant of Probate or Letters of Administration, and **during the administration of the estate**, the value mentioned in the certificate of the officer of the Court shall be found to exceed the true value of the personal estate and effects of the deceased, or if at any time **within three years after the grant**, or within such further period as the Commissioners of Inland Revenue may allow, it shall appear that no amount or an insufficient amount was deducted on account of debts and funeral expenses, it shall be lawful for the said Commissioners, upon proof of the facts to their satisfaction, to return the amount of Stamp Duty which shall have been overpaid, and to cause a certificate to be written by an authorized officer on the Probate or Letters of Administration setting forth such true value, or as the case may be, the amount or corrected amount of deduction, and such certificate shall be substituted for and have the same force and effect as the certificate of the officer of the Court (s. 31).

RECTIFICATION OF DUTY—*continued.*

by Table I. without regard to the contingency of the remarriage. Should the contingency happen the overpaid duty will be returned on application being made.

Legacies given subject to contingencies which may defeat the gift are to be charged with duty as absolute bequests; but where the contingency happens and a higher rate of duty is payable, the person becoming entitled is to pay the difference between the duty paid and the higher rate of duty (s. 17).

Example.

ii. BEQUEST SUBJECT TO A CONTINGENCY.—£600 to C. on his attaining twenty-one and in default of his attaining twenty-one to D. (liable to a different rate of duty).

Here the duty is to be paid as if the £600 was absolutely bequeathed to C., subject to a readjustment of the duty should the contingency happen (ss. 17 & 34 of 36 Geo. 3, c. 52).

Where too little Legacy Duty has been paid in the first instance, the mistake may be rectified if no suit be instituted, on payment of the difference within three months, and £10 per cent. penalty. Where, owing to a mistake as to the consanguinity, too low a rate has been paid, the usual proceeding is to pay the correct duty, and apply for return of duty originally paid on affidavit (Form "H"). The stamped receipt for the duty originally paid must at the same time be given up.

Where, after payment of duty on legacy, etc., any debt shall be recovered against the estate of the deceased or any loss shall happen, by reason whereof, or for any other just cause, any legatee shall be obliged to refund the legacy or any part thereof, the overpaid duty is to be repaid by the Commissioners on due proof made on oath to their satisfaction of the amount of the legacy, etc., refunded (s. 34).

The terms of this section would appear to be sufficiently wide to include the case (for which s. 17, *supra*, makes no provision), where, on the happening of a contingency, the property bequeathed passes to some other person chargeable with a lower rate of duty, or not chargeable with duty at all. In practice, however, this is not conceded.

In case of a grant of probate or administration being revoked, any Legacy Duty paid under it may be returned; but if it ought to have been paid it is to be allowed in account with the rightful executor or administrator (s. 37).

Where an annuitant, having paid the whole of the duty in advance, dies before all the instalments of duty fall due, the overpaid duty to be returned (s. 40 of 16 & 17 Vict. c. 51; applied in practice to Legacy Duty).

5. **Succession Duty** (16 & 17 Vict. c. 51). Form "H."

Where Succession Duty is payable by way of annuity, and the successor, having paid the whole of the duty in advance, dies before all the instalments of duty fall due, the overpaid duty is to be returned (s. 40).

The duty on successions is to be calculated without regard to contingencies, but in the event of the same happening and the property passing to some other person, the successor "is entitled to a return of so much of the duty paid by him as will reduce the same to the amount which would have been payable by him if such duty had been assessed in respect of the actual duration or extent of his interest" (s. 36). *Cf.* ss. 8 and 17 of 36 Geo. 3, c. 52, *supra.*

The commissioners are empowered to return Succession Duty paid by mistake (s. 37).

RECTIFICATION OF DUTY—*continued.*

No allowance is made for contingent incumbrances in estimating the value of a succession, but in the event of a contingent incumbrance taking effect as an actual burden on the interest of the successor, he is entitled to a return of a proportionate amount of the duty so paid by him in respect of the amount or value of the incumbrance when taking effect (s. 34).

6. **Estate Duty** (Forms "D—1," "D—2").

S. 8 (12) of the Finance Act, 1894, enacts that—

Where it is proved to the satisfaction of the Commissioners that too much Estate Duty has been paid, the excess (*a*) shall be repaid by them, and in cases where the overpayment was due to over-valuation by the Commissioners, with interest at 3 per cent. per annum.

S. 8 (1) enacts (*inter alia*) that—

The existing law and practice relating to any of the duties now leviable on or with reference to death shall, subject to the provisions of this Act, and so far as the same are applicable, apply, for the purposes of the **collection, recovery and repayment of Estate Duty** . . . as if such law and practice were in terms made applicable to this part of this Act.

See s. 20 as to allowance of "a sum equal to the amount" of the Death Duty payable in respect of property situate in a **British possession** (*q.v.*) against the Estate Duty payable in respect of that property on the same death.

S. 9 (3) provides that any repayment by the Commissioners of Estate Duty arising from want of title to the land, or other subjects of property, or from the existence of any debt or incumbrance thereon is to "be made to the person producing" to them the "certificate of the Commissioners."

S. 10 (1) enacts that—

Any person aggrieved by the decision of the Commissioners with respect to the **repayment of any excess of duty paid**, or by the amount of duty claimed by the Commissioners, whether on the ground of the value of any property or the rate charged or otherwise, may, on payment of, or giving security as hereinafter mentioned for, the duty claimed by the Commissioners or such portion of it as is then payable by him, appeal to the High Court within the time and in the manner and on the conditions directed by rules of Court, and the amount of duty shall be determined by the High Court, and if the duty as determined is less than that paid to the Commissioners **the excess shall be repaid.**

The main causes for rectification of Estate Duty are the following:—

1. Assets or deductions over-valued, or under-valued.
2. Assets or deductions omitted, or wrongly included.
3. Rate affected by aggregation.
4. Deductions against the Estate Duty itself (s. 20). See also s. 21 of Finance Act, 1896.

Cf. ss. 4; 6 (8); 7 (1) (2) (3) (4) (6) of Finance Act, 1894.

7. **Where Commissioners decline to return overpaid duty.**

The mode of proceeding against the Commissioners **where they decline to return overpaid duty,** is by presenting a petition of right under the Petitions of Right Act, 1860 (23 & 24 Vict. c. 34).

See *De Lancey* v. *The Queen* (L. R. 7 Ex. 140: return of Succession Duty); *Percival's Executors* v. *The Queen* (3 H. & C. 217: return of Probate Duty);

(*a*) And of course any interest paid attributable to such excess duty.

RECTIFICATION OF DUTY—*continued.*

The Queen v. *Commissioners of Inland Revenue, Nathan's Case* (12 Q. B. D. 461: return of Probate Duty); *Perry's Executors* v. *The Queen* (L. R. 4 Ex. 27: return of Probate Duty).

REDEMPTION OF LAND TAX. See "Land Tax."

REDUCTION INTO POSSESSION, of wife's choses in action.

No general rule can be laid down as to what constitutes a reduction into possession. See notes to *Hornsby* v. *Lee* (2 W. & T. L. C.).

Some act must be done which will have the effect of changing the property in the chose in action; or giving the husband control over the chose (*a*) without the necessity of an action (*Re Barber*, 11 Ch. D. 442), or enabling the husband to sue for it as had and received to his use (*Aitchison* v. *Dixon*, L. R. 10 Eq. 589).

What has been held to amount to a reduction into possession.

The actual receipt by the husband of the whole or of part of the chose in action (*Rees* v. *Keith*, 11 Sim. 388; *Nash* v. *Nash*, 2 Mad. 133).

The receipt of money, forming part of an estate of which the wife is administratrix by an agent appointed by the husband and wife (*Re Barber*, 11 Ch. D. 442).

The transfer of the fund to the credit of the husband's lunacy (*Re Jenkins*, 5 Russ. 183); or to trustees on trusts inconsistent with the wife's rights (*Hamilton* v. *Mills*, 29 Beav. 193; *Burnham* v. *Bennett*, 2 Coll. 254; *Hanson* v. *Miller*, 14 Sim. 22).

Judgment in an action by the husband alone (*Oglander* v. *Baston*, 1 Vern. 396).

Judgment followed by execution issued in an action by both (*Sherrington* v. *Yates*, 12 M. & W. 855; *Bond* v. *Simmons*, 3 Atk. 21).

A decree changing the property, for example, directing a settlement of part on the wife (*Macaulay* v. *Philips*, 4 Ves. 19); or payment to the husband (*Heygate* v. *Annesley*, 3 Bro. C. C. 362).

Retainer of the husband's debt to a testator's estate as against an immediate legacy to the wife, subject, however, to her equity to a settlement (*McMahon* v. *Burchell*, 5 Ha. 325).

Assignment by the husband of negotiable instruments, stock in the funds, stocks and shares in public companies, and other personal property not passing by delivery, but assignable at law, for here assignment changes the property (*Wildman* v. *Wildman*, 9 Ves. 174; *Wall* v. *Tomlinson*, 16 Ves. 413; *Warden* v. *Jones*, 2 De G. & J. 76, 87).

What does not amount to a reduction into possession.

Receipt by the husband in any other character (*Baker* v. *Hall*, 12 Ves. 497).

Receipt by the husband of interest on a debt.

Transfer of a fund in Court (*Prole* v. *Soady*, 3 Ch. 220); or of money in the hands of an agent (*Scrutton* v. *Pattillo*, 19 Eq. 369); or of shares (*Nicholson* v. *Drury Buildings Estate Co.*, 7 Ch. D. 48), into the names of the husband and wife, or of the wife alone (*Wildman* v. *Wildman*, *supra*).

Payment of a cheque in favour of the husband and wife, and indorsed by both, into a bank to the wife's account (*Parker* v. *Lechmere*, 12 Ch. D. 256).

An agreement to sell (*Harwood* v. *Fisher*, 1 Y. & C. Ex. 110).

An assignment, except in the case of choses of action assignable at law.

(*a*) "So far as I am aware, nothing has ever been held to amount to reduction into possession of a wife's chose in action which does not give the husband for some moment of time absolute dominion over the property without any concurrence of the wife" (*per* Fry, J., in *Nicholson* v. *Drury Buildings Estate Co.*, 7 Ch. D. 55).

REDUCTION INTO POSSESSION—*continued.*

Judgment or decree in an action by both husband and wife (*Adams* v. *Lavender*, 1 M'Cl. & Y. 41).

Where the choses in action are reversionary.

So long as a chose in action is reversionary there can of course be no reduction into possession by the husband, and an assignment of it by him would not operate as a reduction into possession and would not defeat the wife's right by survivorship, which is a legal right, and against which the equitable right, if it existed, of the assignee, could not prevail (*Purdew* v. *Jackson*, 1 Russ. 57).

See Crawley's "Law of Husband and Wife;" Goodeve's "Personal Property."

REFERENCE, GIFT BY.

A bequest upon the trusts of a settlement is chargeable with Legacy Duty, the limitation of such a bequest being construed as words of reference incorporating the trusts of the settlement in the will (*Re Palmer*, 3 Hurlst. & Norm. 26).

REGISTRARS

Of probate court to prescribe forms and make regulations for guidance of Inland Revenue Officers acting under s. 33 of 44 Vict. c. 12.

REIMBURSEMENT.

An allowance shall not be made against Estate Duty "for any debt in respect whereof there is a right to reimbursement from any other estate or person, unless such reimbursement cannot be obtained" (Finance Act, 1894, s. 7 (1 *b*)). Cf. 44 Vict. c. 12, s. 28, for a similar provision as regards deductions against Probate Duty. See "Contribution."

RELATIONS.

The words "relations" or "near relations" are terms of indefinite import, and in the absence of anything to extend their meaning, they will only comprehend those who would have a claim as next of kin under the Statute of Distributions, and they will take *per capita*. When, however, the gift by will is restricted to "poor relations" only those will take who are also in want of assistance. See Theobald on Wills, 4th ed.

RELATIONSHIP

Of legatee or successor to testator or predecessor, and its bearing on the amount of duty payable.

RELEASE OF DEBT

A legacy (*Attorney-General* v. *Holbrook*, 3 Y. & J. 114).

RELEASE OF LIFE INTEREST. See "Acceleration;" "Beech Case."

RELINQUISHED PROPERTY.

Succession Duty.

S. 38 of the Succession Duty Act, 1893, enacted that—

Where any Successor upon taking a succession shall be bound to relinquish or be deprived of any other property, the Commissioners shall, upon the computation of the assessable value of his succession, make such allowance to him as may be just in respect of the value of such property.

See *In re Micklethwaite* (11 Ex. 452); *Lord Braybrooke* v. *Attorney-General*

RELINQUISHED PROPERTY—*continued.*

(9 Ho. Lds. Cas. 150); *Commissioners of Inland Revenue* v. *Harrison* (L. R. 7 Eng. & Ir. App. 1); *Le Marchant* v. *Commissioners of Inland Revenue* (L. R. 10 Exch. 292), and *cf.* sub-s. 1 of s. 10 of 52 Vict. c. 7, *infra*, in respect of successions by a death on or after June 1, 1889. See "Deductions" (Succession Duty).

S. 10 (1) of 52 Vict. c. 7, enacted that—

The Allowance under s. 38 of the Succession Duty Act, 1853, to a successor upon taking a succession upon the death of any person dying on or after June 1, 1889, shall only be made in respect of the value of property which the successor may have acquired by any title not conferring a succession on him, and which passes from the successor to some other person.

Where successor upon taking a succession is bound to **relinquish** other property (s. 38).

(*a*) A. (tenant-for-life of real estate) and B. (tenant-in-tail in remainder) disentail and resettle to such uses as they shall jointly appoint. They appoint thus—

To pay an annuity of £500 per annum to B. during their joint lives, and subject thereto to A. for life, remainder to B. for life, remainders over.

A. dies before June 1, 1889. B. would, under s. 38, be entitled to a deduction in respect of the value of the annuity relinquished.

A. dies after June 1, 1889. B. would not be so entitled: see provisions of 52 Vict. c. 7, s. 10 (1).

(*b*) A. (father), on the marriage of his daughter (B.), covenants to pay at his death £5000—

(1) to B. absolutely;
or (2) to B. for life, and on her death to others liable to the same rate of duty, viz. her husband and children;
or (3) to B. for life, and then back to settlor;

and he (A.) covenants to pay an annuity of £200 (or 4 per cent. upon the capital, it matters not which) during his life, upon similar trusts.

A. dies before June 1, 1889. Then in (1) the duty would be payable on the capital at A.'s death, less the value of the annuity relinquished; in (2) on the capital, but deferred till B.'s death. In (3) no duty would be payable (s. 12).

A. dies after June 1, 1889. Then the duty would be payable in every case; in (1) and (2) upon the capital at once without a deduction for the annuity relinquished, and in (3) on the daughter's life-interest.

Estate Duty.

C. (tenant-for-life) and H. (heir-in-tail) disentail and resettle, and under the resettlement H. takes an annuity during the joint lives of C. and H., and subject thereto the property is limited to C. for life, remainder to H. for life, remainder over.

On the death of C. (after Aug. 1, 1894) the whole property passes, and no allowance is made for the capitalized value of H.'s annuity. See "Cowley Case."

"We think that no deduction can be allowed in respect of the value of these annuities, because they were not existing incumbrances at the moment of the passing of the property. It is true that H. is not a gainer by the extinction of these annuities, because they were payable to him; they were charges for

RELINQUISHED PROPERTY—*continued.*

his benefit. But they did not affect the value of the property passing, and cannot be regarded as effecting a diminution of the income to which the interest of C. extended," *per* Bruce, J., in this case.

This view was upheld by the Court of Appeal.

The Case is under appeal to the House of Lords.

REMAINDERMAN.

As to protection of, where a residue of personalty (including WASTING property) is given *en masse* to several persons successively, see *Howe* v. *Lord Dartmouth*, 7 Ves. 137; also "Conversion."

Dividends declared before the death of a tenant-for-life, though not paid till afterwards, belong to his representatives and not to the remainderman (*Wright* v. *Tuckett*, 1 J. & H. 266); but dividends on shares in a company declared after the death of a tenant-for-life, though earned before his death, go to the remainderman (*Mackinley* v. *Bates*, 31 Beav. 280).

However, partnership profits declared for a past period are the income of that period (*Ibbotson* v. *Elam*, L. R. 1 Eq. 188.

As to reconversion by, see "Conversion."

As to sale by tenant-for-life and remainderman, see "Tenant-for-life."

As to sale by remainderman of his reversionary interest, see "Reversionary Interests, Alienation of."

Remainderman not liable for unpaid duty on the life interest of the tenant-for-life (*Bowra* v. *Rhodes*, 10 W. R. 747).

RENEWAL OF LEASEHOLDS.

1. As to allowance for fines paid for renewal, see "Fines."
2. As to Succession Duty on premium received for renewal, see "Leaseholds."

RENT.

For the purpose of Succession Duty, the *rack rent* (or the full annual value of the property) is the criterion of annual value.

A *rack rent* is the full annual value of the land, including all improvements.

When the property is in hand, the property tax assessment, or, in default, the gross (not rateable) assessment to the poor, should be inserted in the Succession Account as the annual value. In this case, however, no allowance will be allowed for rates, tithe rent-charge, etc.

A gift to the devisee during minority of a portion of the rents of the real estate devised to him will not constitute a legacy liable to duty under 45 Geo. 3, c. 28, s. 4 (*Shirley* v. *Earl of Ferrers*, 1 Ph. 167), but is liable to Succession Duty under 16 & 17 Vict. c. 51.

A *chief rent* is a rent reserved out of real estate; for example, where A. conveys his whole estate in lands to B., reserving to himself a certain rent payable thereout.

A *quit rent* is a rent payable by the tenant of a copyhold estate to the lord of the manor, so called because thereby the tenant goes quit and free of all services.

A *peppercorn rent* is a nominal rent generally reserved in building leases during the first few years of the tenancy while the buildings are still in course of erection.

A *ground rent* is the rent payable for land let on a building lease on which the lessee erects buildings, which at the termination of the lease, together with the land, become the property of the lessor.

RENT—*continued.*

Fee farm rent: where an estate in fee is granted subject to a rent in fee of at least one-fourth of the value of the lands at the time of its reservation, the rent so reserved is called *fee farm*, because a grant of land reserving so considerable a rent is indeed only letting lands to farm in fee simple instead of the usual method of life or years (1 *Steph. Comm.*).

A *royalty* or *galeage rent* is a sum to be paid in respect of every ton or other certain quantity of minerals raised, or in respect of every 1000 bricks sold, or the like.

As the amount of the royalty depends on the amount of minerals, etc., worked by the tenant, a fixed minimum payment, called a *dead rent* (so called because it is payable although the mine may not be worked), is generally reserved.

A *render* is where a certain proportion of the minerals themselves are to be delivered to the lessor.

A *footage* or *acreage rent* is a rent payable per acre a foot thick of minerals, and so in proportion for a greater or less thickness.

A *way-leave* rent is a sum payable according to the quantity of minerals drawn over specified roads or tramways.

Spoil-bank rent is a sum payable according to the quantity of rubbish deposited.

Tonnage rent is a royalty paid on every ton of minerals gathered.

The annual value of real property yielding income of a fluctuating character, *mines*, *manors*, etc., how ascertained (s. 26 of 16 & 17 Vict. c. 51), see "Assessment."

RENT-CHARGE.

A rent-charge is a separate incorporeal hereditament.

A gift thereof is specific, and has priority over legacies charged on the land (*Creed* v. *Creed*, 11 Cl. & F. 491; *In re Briggs*, 29 W. R. 925).

An annuity charged upon lands devised in fee is a legal rent-charge, even though it may be given to a person, his executors and administrators (*Ramsay* v. *Thorngate*, 16 Sim. 575).

A RENT-CHARGE created by will confers a legacy within s. 4 of 45 Geo. 3, c. 28, although it is in fact real estate (*Attorney-General* v. *Jackson*, 2 Cr. & Jer. 101; *Stow* v. *Davenport*, 5 B. & Ad. 359); but income arising from real estate, directed to be applied for the maintenance of a minor (the real estate being devised to him on his marriage, or the attainment of his majority), was held in *Shirley* v. *Ferrers* (1 Phil. 167) not to be a legacy within said Act. "Nothing but what is a charge upon the estate of another person will come within the statute" (*per* Lord Lyndhurst, C.). Succession Duty (16 & 17 Vict. c. 51, s. 32) would, however, now be payable. See also *Re De Hoghton*, 1895, 2 Ch. 517.

Where a perpetual legal rent-charge is devised to a man and his heirs, the first taker pays Legacy Duty (but see s. 21 of 51 Vict. c. 8) on the value of an annuity in perpetuity (that is for 95 years certain, Table III. Appendix), and the duty so calculated is payable by four equal yearly instalments; the heir or devisee of the legatee of the rent-charge pays duty on the value of his life-interest therein by eight equal half-yearly instalments (s. 21); but see s. 18 of Finance Act, 1894, which makes Succession Duty payable on the **principal value** where the successor is "**competent to dispose**" (*q.v.*), as regards successions arising on a death on or after Aug. 2, 1894.

The devisee of the estate out of which the rent-charge is payable is accountable for the duty (45 Geo. 3, c. 28, s. 5).

See also "Jointure."

RENTE (Fr.).

An annuity. Rentes is the term applied to the French Government Funds.

It was decided in *Attorney-General* v. *Dimond* (1 Cr. & Jerv. 356) that Probate Duty was not payable in respect of a sum of French rentes of which the deceased testator was proprietor at the time of his death. Certain French rentes are, however, transferable in this country, and, therefore, liable to Probate Duty.

French rentes are either (1) inscribed in the Great Book, and are payable to the registered holder on presentation and stamping of the certificate, or (2) are to bearer, with coupons, or (3) are in the names of the holders, with coupons payable to bearer, called mixed rentes.

RENTS.

The affidavit of value, or the inventory, should include an apportionment of the rents of the real estate up to the date of the death of the deceased. Rents of leaseholds due at the death and (for Probate Duty, but not for Estate Duty) since the death to date of grant should also be included. See also "Apportionment Act;" "Accretions."

REPAIRS.

A "**necessary outgoing**" (*q.v.*) within s. 22 of 16 & 17 Vict. c. 51, and in estimating the value of a succession (unless the property is let on a repairing lease) a deduction of 5, 7, 10, or 12½ per cent. on the gross rental, according to the nature and condition of the property, can as a general rule be taken.

Where the successor prior to his becoming entitled in possession has laid out moneys in substantial repairs or permanent improvements, a deduction can be taken in respect of such outlay (s. 34).

REPAYMENT OF DUTY. See "Rectification of Duty."

REPRESENTATION.

This expression in the Finance Act, 1894, "means probate of a will or letters of administration," s. 22 (1 *c*).

Where representation is not required for sums under £100, see Hanson, 4th ed. p. 165.

REPRESENTATION, CHAIN OF.

On the death of one of several executors (who have proved the will) the office devolves to the survivors or survivor; and on the death of the sole or last surviving executor—

(*a*) Intestate, the chain is broken.

(*b*) Testate, his executor, if he has accepted the executorship, represents at once also the original testator (*a*).

The executor of an administrator does not represent the original deceased intestate. Where, however, there are joint administrators, on the death of one, the office devolves to the survivors or survivor.

Examples where the chain is broken—

When the **immediate sole acting** executor dies **intestate** (or testate) but without appointing an executor.

(*a*) Who, as thus representing the original testator, and administering the estate, is liable for Death Duties (*Attorney-General* v. *Smith* (1892) 2 Q. B. 299; (1893) 1 Q. B. 242).

REPRESENTATION, CHAIN OF—*continued.*

When the **survivor** of the **immediate acting** executors dies intestate (so far as can be ascertained. This qualification has been allowed in an exceptional case).

When the **remote sole** acting executor, to whom an executorship has been transmitted downwards **per catenam,** dies intestate.

When the **survivor** of the remote acting executors dies intestate.

When the **remote executor or executors renounce** the probate of their own testator's will, or have been **cited** and have not appeared.

When the **remote executor or executors die without** having proved their own testator's will.

When, of two or more executors who have died after probate has been taken by them, **it is impossible to show which survived** the other or others.

Where one of the executors, having **renounced before** Jan. 11, 1858, has **survived the acting executor or executors,** or where the sole survivor of the acting executors or executor died before Aug. 2, 1858, leaving another executor, who has since died without proving the will (see Tristram and Coote's "Probate Practice," 12th ed. p. 173).

REPRESENTATIVES.

"Representatives," or "legal representatives," generally means the executors or administrators. But the intention of the testator may, of course, control their meaning, and the words have been held to mean the next-of-kin under the Statutes of Distribution as being the persons who "represent" the testator in a popular sense (*Bridge* v. *Abbott*, 3 B. C. C. C. 224; *Palin* v. *Hill*, 1 M. & K. 470), and this will especially be the case where the words "share and share alike," or similar phrases are used (*King* v. *Cleveland*, 28 L. J. Ch. 835).

RESEALING.

The 20 & 21 Vict. c. 79, ss. 94 and 95, (*a*) provides that English grants, being duly stamped, may be made available in Ireland by being simply resealed by the Court of Probate there, and Irish grants may be made available in England by being resealed by the English Court of Probate. The English Court of Probate, however, before resealing an Irish grant, will require a certificate (*b*)

(*a*) S. 95 provides that "From and after the [1st day of January, 1858,] when any probate or letters of administration to be granted by the Court of Probate in Ireland shall be produced to, and a copy thereof deposited with, the registrars of the Court of Probate in England, such probate or letters of administration shall be sealed with the seal of the last-mentioned Court, and, being duly stamped, shall be of the like form and effect, and have the same operation in England, as if it had been originally granted by the Court of Probate in England;" and s. 29 of the Court of Probate Act, 1858, enacts that "letters of administration granted by the Court of Probate in Ireland shall not be resealed under s. 95 of the 20 & 21 Vict. c. 79, until a certificate has been filed, under the hand of a registrar of the Court of Probate in Ireland, that bond has been given to the judge of the Court of Probate in Ireland in a sum sufficient in amount to cover the property in England as well as in Ireland, in respect of which such administration is required to be resealed."

(*b*) In the case of a Scotch grant, inasmuch as the stamp is impressed on the inventory this certificate is not necessary, and, upon production of the Confirmation at the Court of Probate, the Scotch grant will be resealed accordingly. Where, in a Scotch grant, further English assets are discovered, an additional inventory should be exhibited, a further grant of confirmation obtained, which should then be resealed in England (*In the goods of Ryde*, L. R. 2 Prob., &c., Div. 86).

RESEALING—*continued.*

from the Commissioners (now obtained at the Dublin office) that it has been duly stamped, and *vice versâ*. See Rules 73, 74 (1862), *infra* (*a*).

Where further duty is payable, the certificate will be issued after the grant has been rectified.

Where the deceased leaves assets in Scotland, as well as in England or Ireland, or both, the grant of representation must be taken out in the country in which the deceased died domiciled, and a particular mode of proceeding is prescribed by the 21 & 22 Vict. c. 56 (*b*); but upon compliance with the provisions of this Act, and the above Act (20 & 21 Vict. c. 79), a single grant of probate administration, or confirmation, will suffice for every part of the United Kingdom; where, however, the deceased dies possessed of heritable securities in Scotland conceived in favour of heirs and assigns, excluding executors, which is not personal estate within 31 & 32 Vict. c. 101, s. 117, inventory duty must be paid in respect of these securities separately from the rest of his property (23 & 24 Vict. c. 80, s. 9).

Resealing Certificate (Probate Duty).

In the Goods of late of deceased.

This is to certify that the affidavit for the Commissioners of Inland Revenue for obtaining a grant of representation to this deceased, is duly stamped in manner provided by the 44 Vict. c. 12, according to the value of the personal estate

(*a*) Irish Grants.

The seal is not to be affixed to any probate or letters of administration granted in Ireland, so as to give operation thereto as if the grant had been made by the Court of Probate in England, unless it appear from a certificate of the Commissioners of Inland Revenue, or their proper officer, that such probate or letters of administration is duly stamped in respect of the personal estate and effects of which the deceased died possessed in England. In respect to letters of administration, the provisions of statute 21 & 22 Vict. c. 95, s. 29, must also be complied with (Rule 73).

Grants for Property in the United Kingdom.

Whenever a grant of probate or of letters of administration is made under statute 21 & 22 Vict. c. 56, for the whole personal estate and effects of a deceased within the United Kingdom, it must appear by the affidavit made for the Inland Revenue Office, that the testator or intestate died domiciled in England, and that he was possessed of personal estate in Scotland, other than that excluded by 22 & 23 Vict. c. 80, and the value of such personal estate must be separately stated in such affidavit. In case any portion of the personal estate be in Ireland, a separate affidavit and schedule must also be filed. Upon all such grants a note or memorandum must also be written and signed by one of the registrars to the effect that the testator or intestate died domiciled in England (Rule 74).

(*b*) S. 14 of Confirmation and Probate Act, 1858 (21 & 22 Vict. c. 56) provides that "From and after the [12th day of November, 1858,] when any probate or letters of administration to be granted by the Court of Probate in England to the executor or administrator of a person who shall be therein, or, by any note or memorandum written thereon signed by the proper officer, stated to have died domiciled in England, or by the Court of Probate in Ireland to the executor or administrator of a person who shall, in like manner, be stated to have died domiciled in Ireland, shall be produced in the Commissary Court of the county of Edinburgh, and a copy thereof deposited with the commissary clerk of the said Court, the commissary clerk shall indorse, or write on the back or face of such grant a certificate, in the form, as near as may be, of the schedule (F) hereunto annexed; and such probate or letters of administration, being duly stamped, shall be of the like force and effect, and have the same operation in Scotland, as if a confirmation had been granted by the said Court." The affidavit for the Commissioners must state (i.) "the whole of the personal and moveable estate and effects of the deceased in the United Kingdom and the value thereof; and the said affidavit shall also separately specify the value of the said estate and effects in Scotland" (s. 15); (ii.) The domicile of the deceased (ss. 14, 17). The provisions of the Act being merely permissive, the representatives may pay the appropriate Stamp Duty in each country separately; and where the deceased dies domiciled abroad, this is the only course.

RESEALING—*continued.*

and effects therein referred to, situate partly in England and partly in in respect of which a grant of was made by the Probate Division of the High Court of Justice in England (Registry) on the day of 18 , that the gross value of such estate and effects is £ , and that the separate value of that part thereof which is in is £ .

Dated at the Inland Revenue Office, Somerset House, Middlesex, this day of 18 .

By the Commissioners,
Chief Clerk (*Probate Duty*).

Resealing Certificate (Estate Duty).

In the Goods of deceased, who died on the day of 189 .

This is to certify that Estate Duty has been paid upon delivery of the Inland Revenue affidavit, as provided by the 57 & 58 Vict. c. 30, according to the value of the personal estate and effects of the deceased therein referred to, situate partly in England and partly in Ireland. In respect of that part whereof which is in England was granted by the Probate Division of the High Court of Justice in England (Registry) on the day of 189 . The total gross value of such estate and effects is £ , and the separate value of that part thereof which is in Ireland is £

Dated at the Inland Revenue Office, Somerset House, Middlesex, this day of 189 .

By the Commissioners,
Estate Duty Clerk.

This certificate and a copy of the grant are filed. Where letters of administration (with or without will annexed) are granted, a certificate must also be obtained from the Irish Court that bond has been given in that Court in a sum sufficient to cover the property in England as well as in Ireland, which certificate is also filed.

The registrar of the English Court in similar circumstances, likewise certifies that bond has been given in the English Court in a sum sufficient to cover the amount in both countries.

Where an English grant was under a sum insufficient to cover the property in Ireland as well as in England, additional security was directed to be given in England in double the amount of the Irish property (*John Potts*, 2 Sw. & Tr. 7).

An Irish grant under s. 33 of 44 Vict. c. 12 may be resealed at the principal registry on payment of 15*s.* for Court fees.

The Colonial Probates Act, 1892 (55 Vict. c. 6), enacts that—

Where a Court of Probate in a British possession to which this Act applies has granted probate or letters of administration in respect of the estate of a deceased person, the probate or letters so granted may, on being produced to, and a copy thereof deposited with, a Court of Probate in the United Kingdom, be sealed with the seal of that Court, and, thereupon, shall be of the like force and effect, and have the same operation in the United Kingdom, as if granted by that Court.

Provided that the Court shall, before sealing a probate or letters of administration under this section be satisfied—

(*a*) That Probate Duty has been paid in respect of so much (if any) of the estate as is liable to Probate Duty in the United Kingdom ; and

(*b*) In the case of letters of administration, that security has been given in a

RESEALING—*continued.*

sum sufficient in amount to cover the property (if any) in the United Kingdom to which the letters of administration relate;

and may require such evidence, if any, as it thinks fit as to the domicile of the deceased person.

The Court may also, if it thinks fit, on the application of any creditor, require, before sealing, that adequate security be given for the payment of debts due from the estate to creditors residing in the United Kingdom.

For the purposes of this section, a duplicate of any probate or letters of administration sealed with the seal of the Court granting the same, or a copy thereof certified as correct by or under the authority of the Court granting the same, shall have the same effect as the original (s. 2).

This Act shall extend to authorize the sealing in the United Kingdom of any probate or letters of administration granted by a British Court in a foreign country, in like manner as it authorizes the sealing of a probate or letters of administration granted in a British possession to which this Act applies, and the provisions of this Act shall apply accordingly with the necessary modifications (s. 3).

The provisions of this Act have, by order in Council, been held to apply to the following British possessions—

Bahamas.	Manitoba.
Barbados.	Natal.
British Columbia.	New South Wales.
British Guiana.	New Zealand.
British Honduras.	North-West Territories.
Cape of Good Hope.	Nova Scotia.
Falkland Islands.	Ontario.
Fiji.	St. Vincent.
Gibraltar.	South Australia.
Gold Coast.	Straits Settlements.
Grenada.	Tasmania.
Hong Kong.	Tobago.
Jamaica.	Trinidad.
Lagos.	Victoria.
Leeward Islands.	Western Australia.

RESERVATION.

As to liability to Succession Duty of dispositions (not being *bonâ fide* sales, and not conferring an interest expectant on death on the person in whose favour made) accompanied by the reservation of any benefit to the grantor, or any other person, for any term of life, or for any period ascertainable only by reference to death, see s. 7 of 16 & 17 Vict. c. 51.

The increase of benefit accruing to the donee of the property by the determination of the benefit reserved is thus assessed—

In the case of real property, on an annuity (s. 21) for the life of donee; where, however, the death occurred after Aug. 1, 1894, duty is payable on the principal value (Finance Act, 1894, s. 18).

In the case of personal property, on a perpetual annuity, *i.e.* for 95 years certain (Table III., annexed to the Succession Duty Act, 1853).

Lord-Advocate *v.* **McKersies (19 Sco. L. R. 438).**

A., the sole proprietor of a distillery, assigned on Jan. 11, 1876, his whole

RESERVATION—*continued.*

interest thereon to his two sons (B. and C.), declaring the value of such interest (£28,750) to be a payment on account of the share of the residue of his estate provided to them by settlement; and the sons bound themselves to pay A. an annuity of £1150, being four per cent. on the value stated. On A.'s death (Dec. 2, 1878), when the annuity determined, Succession Duty was claimed and held to be payable in respect of the beneficial interest accruing to B. and C.

Attorney-General *v.* **Noyes (8 Q. B. D. (C. A.) 125; 30 W. R. 434).**

A., subsequent to May 19, 1853, by an irrevocable deed settled personalty upon trust for himself for a term of four years, if he should so long live, and upon trust for his nieces therein named, absolutely on the expiration of the term or on his death, whichever should first happen.

A. died eighteen months before the expiration of the term.

Held, that Succession Duty was payable on the whole sum (and not merely on the income thereof for the period between the death of A. and the end of the term), and that the event on which the nieces came into possession was the death of the settlor, and they were chargeable with duty accordingly.

M. (mortgagor) and N. (mortgagee) conveyed the mortgaged property to O. (son of N.) free from the mortgage debt in consideration of a certain sum paid to M. by N., and of a covenant by O. to pay N. during his life an annual sum (representing approximately 3 per cent. on the purchase money).

Held, the transaction was a gift of the money to O., and a collateral agreement by which a benefit was reserved to N., so as to make the property liable to Account Duty (**Attorney-General** *v.* **Worrall** (1895), 1 Q. B. 99).

X. by deed, dated Oct. 19, 1885, transferred his estates, including a manor-house, to the defendant, his nephew, subject, as regards property other than the mansion-house, to an annual rent-charge in favour of X. for life, and subject also to the manor-house being enjoyed as theretofore by X. By the same deed the defendant entered into several covenants relating to the estates, and a power of revoking the deed and reassuming the property in the estates was reserved to X. upon the breach of certain of the said covenants by the defendant. The annual value of the estate at the death of X. was considerably in excess of the rent-charge reserved.

Held, that a sufficient interest and a sufficient power of revocation were reserved in the property so as to bring it within the description of property contained in the Customs and Inland Revenue Act, 1881, s. 38 (2 *c*), and that, on the death of X., in October, 1894, the whole of the property became chargeable with Estate Duty under the Finance Act, 1894, s. 1.—**Attorney-General** *v.* **Grey (Earl)**, 77 L. T. 531; affirmed by Court of Appeal (August, 1898).

As to liability of Account Duty where the settlor of personal property reserves to himself a similar benefit, see *Crossman* v. *Reg.*, 18 Q. B. D. 256; *Attorney-General* v. *Heywood*, 19 Q. B. D. 326; 41 Vict. c. 12, s. 38; 52 Vict. c. 7, s. 11; dictum of Wills, J., in *Attorney-General* v. *Gosling* (1892), 1 Q. B. 545; "Voluntary Settlement."

RESETTLEMENTS.

Before an expectant tenant-in-tail can resettle, he must execute a disentailing deed barring his estate tail and converting it into an estate in fee simple.

The tenant-in-tail can only disentail by deed according to the provisions of the Fines and Recoveries Act, 1833, and not by will or contract. A disentailment is

RESETTLEMENTS—*continued.*

generally effected by a deed made by the tenant-in-tail and a grantee to uses, the protector joining (when the estate is not in possession) to give his consent, unless given by a separate deed.

The tenant-in-tail conveys the premises to the grantee, to hold them to the grantee and his heirs freed and discharged from the estates tail of the tenant-in-tail, and all estates, etc., to take effect after or in defeasance of the same to the use of the tenant-in-tail in fee simple, subject to any prior estates where such exist.

The disentailment having been effected, a resettlement is generally made. As a rule these transactions take place on the occasion of the marriage of the eldest son of the tenant-for-life. The estate having been disentailed, the tenant-for-life (A.) generally charges his life estate with an annuity to be paid to such eldest son (B.) during their joint lives, and a jointure for B.'s intended wife should B. predecease A., and B. cuts down his tenancy in tail to a life estate with a remainder, subject to a jointure for his wife and portions for the youngest children, to his children successively in tail, with remainders to his brothers and their children in tail, with an ultimate remainder in fee to B. The resettlement will also contain the usual powers and clauses as to management of the estate, trustees, etc., and will be made subject to the charges for pin money, jointure, and portions created by the former settlement.

The Succession Duty payable in respect of dispositions under resettlements.

1. Relinquishment by B. of annuity on death of A., allowance for, see "Relinquished Property."
2. B.'s succession under the resettlement; who predecessor, see "Predecessor."
3. Duty payable in respect of portions, jointures appointed, see "Jointure" and "Portions."

RESIDUARY ACCOUNT (Form No. 3).

As to deductions which may be taken therein against Legacy Duty, see "Deductions."

RESIDUARY BEQUEST

Will pass everything not disposed of, whether the testator has attempted to dispose of it or not; and where the gift is of a residue "not otherwise disposed of" it will mean "not otherwise effectually disposed of" (*Green* v. *Dunn*, 20 Beav. 6).

It will also include lapsed legacies unless testator has shown a contrary intention, as, for example, where he bequeaths the residue remaining after the payment of certain legacies (*Easum* v. *Appleford*, 5 M. & C. 61).

RESIDUARY DEVISE.

By s. 25 of the Wills Act (1 Vict. c. 26) a residuary devise shall include estates comprised in lapsed and void devises.

A residuary devise is specific (*Hensman* v. *Fryer*, L. R. 3 Ch. App. 420; *Lancefield* v. *Iggulden*, L. R. 10 Ch. App. 136).

RESIDUE, GIFT OF.

RESIDUE.

Residue of a PARTICULAR FUND

RESIDUE OF AN APPOINTED FUND passes shares in the fund the gift of which lapses or fails unless it can be shown that by the word "residue" the testator meant no more than the precise sum which remains after the other gifts are provided for, in which case the gift of the residue being SPECIFIC, would not carry lapsed shares.

Residue of a SPECIFIC PORTION of testator's OWN property.

[REALTY:

A. devises part of his lands in a particular parish to B., and the rest of those lands to C.

The devise to C. is specific, and will not carry lapsed shares.]

PERSONALTY:

A. bequeaths a particular portion of his personalty to B., and the residue of such portion to C.(*d*).

The gift to C. carries shares, which lapse or fail.

GENERAL RESIDUARY GIFT passes everything not disposed of or the disposition of which fails through lapse, or otherwise; also property attempted to be appointed.

LAPSE (*a*):

Shares of residue which fail do not, apart from testator's direction, fall into the general residue, but are held to be undisposed of, and go to the persons entitled under the Statutes of Distribution.

EXAMPLES:

1. Residue equally among A. (who predeceases), B., and C.
2. Residue thus—
   One-third to A. (predeceased) (*b*).
   Residue to B.
3. Residue thus—
   One-fourth thus:
   To pay £95 to A. (predeceased) (*c*).
   Residue to B.
   One-third to C.
   Residue to D.

In each case the gift to A., which fails, passes to the persons entitled under the Statutes of Distribution as undisposed of.

Where a general residuary bequest is contingent in terms it carries the intermediate income, which does not pass to the next-of-kin as undisposed of, but accumulates.

For example, A. bequeaths the general residue to such son of B. as shall first attain twenty-one, and B. has no son at testator's death, the income of the residue does not go to the next-of-kin, but accumulates in trust for a son of B. who may come into existence.

Estate Duty, Settlement Estate Duty (but see Finance Act, 1896, s. 19), Legacy Duty (on legacies given free), and Probate Duty (but see 23 & 24 Vict. c. 15, ss. 4

(*a*) As to the effect of ss. 32 and 33 of the Wills Act, see "Lapse."
(*b*) *Skrymsher* v. *Northcote*, 1 Sw. 566.
(*c*) *Simmons* v. *Rudall*, 1 Sim. N. S. 115.
(*d*) Where a gift of the residue of a specific fund is specific, see Theobald, 4th ed. pp. 120, 121.

RESIDUE, GIFT OF—*continued.*

and 5, "Powers") are primarily payable out of the residue, except where it is itself a specific fund.

Residue cannot be given duty free. See "Free of Duty, Gifts."

RETAINER.

1. *Of legacy or residue* (ss. 6, 25, 32 of 36 Geo. 3, c. 52; s. 5 of 45 Geo. 3, c. 28).

   Legacy Duty becomes payable **upon retainer** for benefit of legatee, or at the time of payment, delivery, or other satisfaction or discharge, and not when the right to the legacy accrues (*In re Hillas*, 2 Ir. Jur. 36).

   A mere appropriation of funds by an executor to the purposes of a legacy by transferring them into his own name as trustee does not amount to a payment, retainer or satisfaction of the legacy within the terms of the Act (55 Geo. 3, c. 184, Sch. Part III.; *Attorney-General* v. *Manners*, 1 Price, 411; *Attorney-General* v. *Wood*, 2 Yo. & Jer. 290; *Attorney-General* v. *Hancock*, 2 M. & W. 563).

   However, where the funds have been invested under an order of the Court, or paid into Court with the rest of the testator's assets in an administration suit, such investment or payment into Court is considered as amounting to precisely the same thing as a payment to the legatees themselves (*Hill* v. *Atkinson*, 2 Mer. 45, 2 Pri. 399; *Coombe* v. *Trist*, 1 My. & Cr. 69; *Attorney-General* v. *Loscombe*, 29 L. J. R. (Exch.) 305, 5 Hurl. & N. 564).

   A legacy may be "satisfied" without the actual payment of any money by the executor to the legatee (*Attorney-General* v. *Holford*, 1 Pri. 427; *Attorney-General* v. *Metcalfe*, 6 Ex. 26).

2. *Executor's right of retainer* (*a*).

   The executor has a right of retainer (which was not abolished by Judicature Act, 1875) in respect of any debt which may be owing to him personally by the deceased. This right of retainer exists only out of strictly legal assets, and it is allowed only as against creditors of equal degree; and an executor, a simple contract creditor, cannot (notwithstanding Hinde Palmer's Act, 1869) retain against a specialty creditor (*b*).

   Where administration is granted to a person as next-of-kin to whom deceased is indebted, he, not having entered into a bond with sureties to pay all creditors and not prefer himself, has the same right of retainer as an executor. The right of retainer may be exercised though the debt is statute barred; but not where the debt is not evidenced in writing as required by the Statute of Frauds (where the proof of the debt is required by that Statute to be in writing): for here the executor would be guilty of a devastavit in paying the debt (*Field* v. *White*, 29 Ch. D. 358).

   Where he assented to a composition he cannot exercise his right of retainer (*Birt* v. *Birt*, 22 C. D. 604).

3. *Retainer of legacy to a debtor of testator.*

   An executor may retain so much of a legacy to a debtor of testator as is sufficient to satisfy the debt, though statute barred. So may an administrator retain against the share of one of the next-of-kin (*Re Cordwell's Estate*, L. R. 20 Eq. 644).

   Otherwise in the case of freeholds, or leaseholds, or chattels given specifically.

(*a*) If, however, the estate of a deceased debtor be administered in bankruptcy under the Bankruptcy Act, the executor loses the priority given to him by his right of retainer.

(*b*) *Wilson* v. *Coxwell*, 23 Ch. D. 764; *Re Jones*, 31 Ch. D. 440.

RETURN OF DUTY. See "Rectification of Duty."

REVERSIONARY INTERESTS, Alienation or Devolution of (ss. 15, 14 of 16 & 17 Vict. c. 51).

I. *Realty.*

A. (testator or settlor); B. (tenant-for-life); C. (remainderman in fee simple).

1. C. sells, or assigns by way of gift, his reversionary interest to Q.

Q. pays Succession Duty as alienee of C., and at *C.'s rate*, but, where B. dies before Aug. 2, 1894, on the value of his own (Q.'s) life interest, or, where Q. represents a corporation (s. 15), or where B. dies after Aug. 1, 1894, on the *principal* value; *Solicitor-General* v. *The Law Reversionary Interest Society* (L. R. 8 Ex. 233), Finance Act, 1894, s. 18. *Cf. Attorney-General* v. *Mander*, 74 L. T. 103, "Leaseholds."

Where C. sells, etc., to B., B.'s life estate merges in the fee. B., however, is only liable for the instalments of duty which actually become due (s. 21); and on his death a new succession arises. Where, however, B., in turn, sells, etc., to D., D. pays duty as alienee of C.

2. C. settles his reversionary interest upon himself for life, remainders over.

Here C. cuts down his fee interest to a life interest, and should he die before all the instalments of duty fall due, only those actually due would be payable (s. 21).

3. C. predeceases B., leaving B. his heir-at-law, and B. sells to R. Here, inasmuch as B. cannot be liable to duty on his own death, neither can his alienee (R.) be.

Where C. died prior to 1853, leaving H. his heir-at-law, H. was formerly held to take as alienee of C. and pay duty at C.'s rate and on his own age (*Attorney-General* v. *Rushton*, 9 L. T. (N.S.) 832); this rule is no longer followed in official practice, and H. is now held to take his succession as derived from his immediate ancestor C.

4. C. predeceases B., devising the realty upon trust to sell, and the proceeds to S.

Here, it was formerly the rule to claim duty on the death of B. from the purchaser of the realty as the alienee of C., if the reversionary interest only was sold by the trustees of C.'s will and not the property itself as an interest in possession; but since the 51 Vict. c. 8 a devise upon trust for sale is held to confer a new succession, and the second branch of s. 15 of 16 & 17 Vict. c. 51 is held not to be applicable.

II. *Personalty.*

A. (testator or settlor); B. (tenant-for-life); C. (remainderman).

1. C. sells his reversionary interest to K.

Here K. pays Succession Duty on B.'s death at *C.'s rate* (s. 15).

2. C. settles his reversionary interest upon himself for life, remainders to L.

Here, should C. predecease B., only ONE DUTY is payable on B.'s death, viz. that at the higher rate chargeable under the two dispositions; duty being first paid under the old disposition, and the balance (if any) being assessed on L. under the new disposition.

Where, however, the fund was originally bequeathed and (B. and C. being liable to the same rate of duty) duty was paid on the *corpus* of the fund (s. 12 of 36 Geo. 3, c. 52), Succession Duty would be payable by L. under the new disposition; not so, where C. assigns direct to L.

REVERSIONARY INTERESTS—*continued.*

3. C. predeceases B. and bequeaths his reversionary interest to M.

(*a*) Where fund originally passed by will—

Legacy Duty would be payable by C.'s representatives on B.'s death on the fund as derived from A. (first devolution) and by M. on the fund (less duty already paid thereon) as derived from C. (second devolution). If M. in turn should predecease B., Legacy Duty would also be payable on the fund under his will or intestacy (third devolution), and so on.

(*b*) Where fund originally settled—

The only duties payable are the Succession Duty payable by C. on B.'s death, and, where the Legacy Duty payable under C.'s will, and under the will or intestacy of M. in the aggregate exceeds the Succession Duty, Legacy Duty in respect of such excess (*Attorney-General* v. *Littledale*, L. R. 5 Ex. 275, 5 Eng. & Ir. H. L. 290).

As to alienation (settlement) of a fund to be raised after settlor's own death, see *Attorney-General* v. *Yelverton*; *Re Jenkinson*; "Predecessor."

III. Where the alienation is such as to create a new succession, see "New Succession."

See also "Interests in Expectancy, Alienation of," and effect of such alienation on liability to Estate Duty.

REVERTER TO SETTLOR.

See "Interests in Expectancy."

REVOCATION OF GRANT.

In case of a grant of probate or administration being **revoked** any Legacy Duty paid under it may be returned; but if it ought to have been paid it is to be allowed in account with the rightful executor or administrator (36 Geo. 3, c. 52, s. 37), and this notwithstanding the revocation and new grant are the result of a compromise.

By an instrument purporting to be his will, A. bequeathed the whole of his property (net £12,748) to B. (stranger-in-blood) who was made executor. B. proved the will and paid Legacy Duty at the rate of 10 per cent.

Subsequently C., the next-of-kin to A., disputed the will on the ground that A. was not of disposing mind.

B. paid £6000 to C., and consented that the will should be REVOKED, and administration taken out by C., who, in consideration thereof, released to B. her claim on the £12,748.

C. was liable to a rate of duty less than 10 per cent.

Held, that under 36 Geo. 3, c. 52, s. 37, B. was entitled to a return of duty not only on the £6000, but also on the remaining £6748, and that the duty on the whole £12,748 was to be accounted for between C. and the Commissioners of Stamps as duty charged on C. at the lower rate (*Reg.* v. *Commissioners of Stamps and Taxes, Stracey's Case*, 6 Q. B. 657).

Where, however, rights arising under a will of doubtful construction are compromised, duty is payable according to the relationship of the persons actually taking according to the construction adopted. Hanson, 4th ed. p. 32. See "Compromise."

REVOCATION OF WILL.

There are four modes in which a will can be revoked—

1. By another will, or writing executed in the same manner as the original will.
2. By burning or other act done *animo revocandi.*
3. By the disposition of the property by the testator in his lifetime.
4. By marriage, except it be a will made in exercise of a power of appointment, when the estate thereby appointed would not, in default of appointment, pass to the real or personal representatives of testator or testatrix (Wills Act, s. 18).

By (1) and (3) the will may be revoked either entirely or partially; by (2) and (4) the revocation will be total.

A revoked will or codicil can only be subsequently revived by re-execution, or by a codicil duly executed, showing an intention to revive the will. And where the will or codicil is partly revoked, and afterwards wholly revoked, and then revived, such revival does not extend to that part which was revoked before the revocation of the whole, unless a contrary intention appears. See further, Jarman on Wills.

ROYAL FAMILY, Liability of, to Duty.

Members of the Royal Family are exempt from the payment of Legacy Duty by 55 Geo. 3, c. 184, Sch. Part III.; and from the payment of Succession Duty by s. 18 of 16 & 17 Vict. c. 51. There is, however, no provision for their exemption from the Probate and Account Stamp Duty.

RULE AGAINST PERPETUITIES.

All property whatsoever (except remainders) must be limited so as to vest in a life or lives *in being*, or *twenty-one years after*, allowing for gestation, if gestation exists, or *twenty-one years* independently of any life.

The period allowed for vesting is computed in the case of a deed from the date thereof, and of a will from testator's death. Any limitation which violates the above rule is wholly void [for example, a gift to a class which is void for remoteness as to any member of that class, fails altogether], or even if it is such which possibly might have violated it; for example, a gift to the heir of X. (in being) when he attains twenty-five. If the son of X. is aged three when X. dies this would be tying up the property for longer than a life or lives in being and twenty-one years after. Where, however, gifts of given sums to each member of a class are wholly independent of each other, and cannot be increased or diminished by the number of the members constituting the class, the gifts may stand which do not infringe the perpetuity rule (*Wilkinson* v. *Duncan*, 30 B. 111). In regard to transgressions of the above rule, it is important to remember that in a special (or limited) power the appointee's estate vests from the creation of the power, and not (as in the case of a general power of appointment) from the execution thereof. See "Powers."

RULE IN SHELLEY'S CASE.

Whenever an estate of *freehold* is given, and by the same conveyance or will an ulterior estate (whether mediately or immediately) is limited to the *heirs* of the same person in fee or in tail, such ulterior estate vests in that person himself in the same manner as if it had been expressly given to him and his heirs. The word "heirs" being a word of limitation (that is, limiting or marking out the estate to be taken by the grantee), and not of purchase.

RULE IN SHELLEY'S CASE—*continued.*

For example:—

1. Land is limited to A. for life (or to A. during life or widowhood of B.), with remainder to the heirs of A. Here A. takes an estate in fee simple.
2. Land is limited to A. for life, and after his decease to the heirs of his body. Here A. takes an estate tail.
3. Land is limited to A. for life, remainder to B. for life, remainder to the heirs of the body of A.
   Here A. takes an estate tail, and may bar and resettle subject to B.'s life estate.
4. Land is limited to A. for life, remainder to B. for life, remainder to the heirs of the body of B., remainders over.
   Here B. takes an estate tail and can bar the entail with A.'s consent as protector, or without his consent can create a base fee.
5. Land is limited to A. for life, remainder to B. for life, remainder to the heirs of the body of A., with remainder to the right heirs of B.
   Here A. will take an estate tail, subject to B.'s life estate, and B. will take the remainder in fee.
   The rule does not apply to leaseholds, nor if one estate is equitable and the other legal; but it does if both are equitable.

RULE IN WILD'S CASE.

Where there is a devise to A. and his "children," and A. has no issue at the time of the devise, there *primâ facie* the word "children" will be held to be a word of limitation, and A. will take an estate tail (Tudor, L. C. R. P. 669).

For this purpose a child *en ventre* would be considered as non-existent (*Roper* v. *Roper*, L. R. 3 C. P. 32).

If there are children living at the time of the devise, "children" must be taken as a word of purchase, and they will take a joint estate with A. (*Byng* v. *Byng*, 10 H. L. 171).

This rule is not applicable to wills of personal estate (*Audsley* v. *Horn*, 26 B. 195).

S.

SAILORS AND SOLDIERS,

Exemption of, from Probate Duty, see "Exemptions."

SALE.

1. Conveyances or assignments by way of *bonâ fide* sale do not come within the operation of the Succession Duty Act (ss. 7 and 17 of 16 & 17 Vict. c. 51).

   Fryer *v.* Morland (3 Ch. D. 675).

   A., tenant-for-life, and B., tenant-for-life in remainder of certain estates, had a joint power of appointment.

   B.'s estate had by a mortgage and foreclosure become the absolute property of C., who devised it to D.

   D. sold her reversion to A. for £15,000 down and £52,500 to be paid on A.'s death secured by a charge on the property.

   Held, that Succession Duty was not payable on A.'s death on the £52,500, the conveyance being by way of *bonâ fide* sale. "Looking at the Act as a

SALE—*continued.*

whole, it is in fact an Act to grant a duty on successions to property by persons succeeding to estates by gratuitous title, the only exception is that a marriage consideration is treated as a gratuitous title. It is opposed to the Act to say that a purchaser for value is to pay the duty" (per Jessel, M.R., in this case).

Lord Advocate *v.* **Earl of Fife (21 Sco. L. R. 151).**

A., heir presumptive to certain entailed estates, and B., heir of entail in possession, agreed to disentail.

A. took over the estates subject to the payment of B.'s debts and of an annuity to B.

Policies of assurance on B.'s life were assigned to A., which he voluntarily kept up.

The Crown claimed duty from A. on the amount of the said policies on the death of B.

A. objected to pay duty on the ground that the assignment of the policies to him was for consideration "in money or money's worth;" he had consented to disentail and to burden the estates with his father's personal debts.

Held, that no Succession Duty was payable thereon.

De Rechberg *v.* **Beeton (38 Ch. D. 192; 36 W. R. 682).**

A. by his will settled ecclesiastical leaseholds for lives (of which B.'s was the last) upon trusts for B. for life and over. C. having acquired B.'s life interest, purchased the reversion from the Ecclesiastical Commissioners and had been held to have purchased as trustee for the persons entitled under A.'s will. Part of the land was represented by a sum paid into Court as compensation by a public body which had taken it under statutory powers.

After B.'s death the equitable interest under A.'s will had become vested absolutely in D., who after satisfying C.'s lien for the purchase-money, was entitled (*inter alia*) to the fund in Court.

Held, that D.'s title for purposes of duty was a title acquired under the will and not by purchase, and that Succession Duty was payable on the death of B., just as if there had been a trust in A.'s will for the purchase of the reversion (*Fryer* v. *Morland* distinguished).

Floyer *v.* **Bankes (3 De G. Jo. & Sm. 306).**

The release of a possibility of dower or freebench held not to satisfy the words "valuable consideration in money's worth," in s. 17.

"If the owner of a freehold estate in fee simple contracts to sell it for a sum of money, subject to the reserving a life interest in himself, the relation of predecessor and successor will not arise between the vendor and purchaser. So, if two persons contract with a third for the purchase of a freehold estate, and they pay for it jointly, directing the conveyance to be made to one for life, with remainder to the other in fee, there will not be the relation of predecessor and successor between the vendor and the remainderman, although it is clear that the remainder in fee will be a succession. But it is not intended to except from the operation of the Act property arising upon death under contracts for valuable consideration generally. Marriage is, by the law of England, a valuable consideration for a contract, and that of the highest kind; but property arising under a contract, in consideration of marriage, is not excepted, even in favour of persons coming directly within that consideration," *per* Lord Westbury, C., in this case.

SALE—*continued.*

2. Direction (or exercise of power) to sell real estate, effect of, as regards liability to—Probate Duty, Legacy Duty (45 Geo. 3, c. 28, s. 4), Succession Duty (51 Vict. c. 8, s. 21), Account Stamp Duty (44 Vict. c. 12, s. 38), and Temporary Estate Duty (52 Vict. c. 7), see "Conversion."
3. Sale of reversionary interest, see "Reversionary Interests, Alienation of."
4. Trustees have a statutory power of sale where—

(i.) An estate is devised to them charged with debts or legacies, without any provision for raising the same, and where the will comes into operation after Aug. 13, 1859 (22 & 23 Vict. c. 35, ss. 14, 15).

(ii.) They are trustees for the purposes of the Settled Land Act, 1882, and
(i.) the life-tenant is an infant (s. 60);
(ii.) the life-tenant is purchasing (Settled Land Act, 1890, s. 12).

(iii.) Where they have to pay Estate Duty in respect of property (Finance Act, 1894, s. 9 (5)).

An executor can sell where—

(1) The will has directed a sale, although the property is not devised to him;
(2) And this, though the persons by whom the sale is to be made are not named, provided the proceeds are distributable by the executor, either for debts or legacies.
(3) The property is devised to him charged with debts (*Corser* v. *Cartwright*, L. R. 7 H. L. 731); not so where the property is charged with legacies only (*Re Rebbeck*, 42 W. R. 473).
(4) In case (i.), *supra*, where there is no absolute devise of the land to trustees (s. 16); otherwise where there is a beneficial devise of the whole estate (*Re Rebbeck*, *supra*).
(5) In case (iii.), *supra*.

SATISFACTION

Of legacies by subsequent legacies, see "Cumulative Legacies."
Of legacies by portions, see "Ademption."
Of portions (secured by settlement) by legacies—

Where a portion is secured on the death of A. to B. (child of A., or to whom A. stands in *loco parentis*) and A. gives B. a legacy, not stating his purpose in so doing, the presumption is that the legacy is given with the intention of satisfying the portion, if

1. The legacy be of a sum as great or greater than the portion.
2. If it be *ejusdem generis*.
3. If it be equally certain with the portion and subject to no contingency not applicable to both.
4. And if it be shown that it is not given for a different purpose.

If the legacy be less than the amount of the portion, it will be a satisfaction *pro tanto* (*Thynne* v. *Glengall*, 2 H. of L. 131).

Of debts by legacies—

If the bequest be exactly equal to the debt (which must exist at the date of the will), it will be regarded as a satisfaction thereof, and where the debt has been discharged before the death of the testator the legacy is not payable.

If the bequest is LESS than the debt, it is not a satisfaction even *pro tanto*.

If the bequest be GREATER than the debt, it will be regarded as a satisfaction of the debt, and the excess as a legacy.

SATISFACTION—*continued.*

Equity will, however, lay hold of slight circumstances to rebut the presumption of satisfaction; for example—

(*a*) An express direction in the will to pay debts and legacies.

(*b*) Where the time fixed for the payment of the legacy differs from the time when the payment of the debt can be demanded.

(*c*) The legacy being contingent.

SAVINGS BANK.

Any legacy or residue or part thereof bequeathed out of the estate and effects of a deceased depositor in any Savings Bank in England or Ireland, where the whole of such estate and effects does not exceed the value of £50 (*a*), is exempt from Legacy Duty, and the production of probate or letters of administration is dispensed with where deposits in Savings Banks (exclusive of interest) do not exceed £50 (*a*) (26 & 27 Vict. c. 87).

Post-office Savings Bank Regulations, 1894.

"4 (1) If the total property of any deceased depositor exceeds £100, after deduction of debts and funeral expenses, any sum which may under these Regulations be paid to a survivor in the account (not being a trustee) whose name has been added to the account at the request of such deceased depositor, or otherwise than to the legal personal representative of the depositor, shall, notwithstanding such payment, be for the purposes of Estate Duty treated as passing under the will or intestacy of the deceased depositor.

(2) The Postmaster-General shall, before making any payment in respect of deposits standing to the credit of a deceased depositor (either alone or jointly with any other depositor (not being a trustee) whose name has been added to such account at the request of such deceased depositor) to any one but the legal personal representative of such deceased depositor, require a declaration by the claimant, or one of the claimants, or by the survivor, or survivors in the account (or other evidence to the Postmaster-General's satisfaction), that the total estate of the deceased depositor, including the amount of such deposits, does not after deduction of debts and funeral expenses exceed the value of £100.

(3) In every such case as aforesaid, where the total estate of the deceased depositor, including such deposits, but after deduction of debts and funeral expenses, exceeds £100, the Postmaster-General shall, before making any payment to any survivor in the account, or to any person other than the legal personal representative of the deceased depositor, require production of a certificate from the Commissioners of Inland Revenue of the payment of the Estate Duty, and of a duly stamped receipt for the Succession or Legacy Duty, payable in respect of such deposits, or of a certificate stating that no Succession or Legacy Duty is payable."

The "Trustee Savings Bank Regulations, 1895," contain similar provisions in clause 23 (1), (2), and (3), with regard to deceased depositors in Trustee Savings Banks.

(*a*) Increased to £100 by the 46 & 47 Vict. c. 47, s. 3.

SCALES OF DUTY.

(I.) **Estate Duty** (Finance Act, 1894, s. 17).

Where the Principal Value of the Estate passing on a Death on or after Aug. 2, 1894,					Estate Duty shall be payable at the rate per cent. of
Exceeds	£100	and does not exceed	£500	.. ..	£1 (*a*)
„	500	„ „	1,000	.. ..	£2
„	1,000	„ „	10,000	.. ..	£3
„	10,000	„ „	25,000	.. ..	£4
„	25,000	„ „	50,000	.. ..	£4 10*s.*
„	50,000	„ „	75,000	.. ..	£5
„	75,000	„ „	100,000	.. ..	£5 10*s.*
„	100,000	„ „	150,000	.. ..	£6
„	150,000	„ „	250,000	.. ..	£6 10*s.*
„	250,000	„ „	500,000	.. ..	£7
„	500,000	„ „	1,000,000	.. ..	£7 10*s.*
„	1,000,000	.. .. ..	..	.. ..	£8

(II.) Probate and Administration Duty.

(1) *Previous to April* 1, 1880 (55 *Geo.* 3, *c.* 184).

	£		£	Probate. £ *s.*	Administration without Will. £ *s.*
Above	20	and under	50	.. 0 10 ..	0 10
Amount to	50	„	100	.. 0 10 ..	1 0
„	100	„	200	.. 2 0 ..	3 0
„	200	„	300	.. 5 0 ..	8 0
„	300	„	450	.. 8 0 ..	11 0
„	450	„	600	.. 11 0 ..	15 0
„	600	„	800	.. 15 0 ..	22 0
„	800	„	1,000	.. 22 0 ..	30 0
„	1,000	„	1,500	.. 30 0 ..	45 0
„	1,500	„	2,000	.. 40 0 ..	60 0
„	2,000	„	3,000	.. 50 0 ..	75 0
„	3,000	„	4,000	.. 60 0 ..	90 0
„	4,000	„	5,000	.. 80 0 ..	120 0
„	5,000	„	6,000	.. 100 0 ..	150 0
„	6,000	„	7,000	.. 120 0 ..	180 0
„	7,000	„	8,000	.. 140 0 ..	210 0
„	8,000	„	9,000	.. 160 0 ..	240 0
„	9,000	„	10,000	.. 180 0 ..	270 0
„	10,000	„	12,000	.. 200 0 ..	300 0
„	12,000	„	14,000	.. 220 0 ..	330 0
„	14,000	„	16,000	.. 250 0 ..	375 0
„	16,000	„	18,000	.. 280 0 ..	420 0
„	18,000	„	20,000	.. 310 0 ..	465 0
„	20,000	„	25,000	.. 350 0 ..	525 0
„	25,000	„	30,000	.. 400 0 ..	600 0

(*a*) See also "Fixed Duties."

SCALES OF DUTY—*continued.*

				Probate.			Administration without Will.	
£		£		£	s.		£	s.
Amount to 30,000	and under	35,000	..	450	0	..	675	0
„ 35,000	„	40,000	..	525	0	..	785	0
„ 40,000	„	45,000	..	600	0	..	900	0
„ 45,000	„	50,000	..	675	0	..	1,010	0
„ 50,000	„	60,000	..	750	0	..	1,125	0
„ 60,000	„	70,000	..	900	0	..	1,350	0
„ 70,000	„	80,000	..	1,050	0	..	1,575	0
„ 80,000	„	90,000	..	1,200	0	..	1,800	0
„ 90,000	„	100,000	..	1,350	0	..	2,025	0
„ 100,000	„	120,000	..	1,500	0	..	2,250	0
„ 120,000	„	140,000	..	1,800	0	..	2,700	0
„ 140,000	„	160,000	..	2,100	0	..	3,150	0
„ 160,000	„	180,000	..	2,400	0	..	3,600	0
„ 180,000	„	200,000	..	2,700	0	..	4,050	0
„ 200,000	„	250,000	..	3,000	0	..	4,500	0
„ 250,000	„	300,000	..	3,750	0	..	5,625	0
„ 300,000	„	350,000	..	4,500	0	..	6,750	0
„ 350,000	„	400,000	..	5,250	0	..	7,875	0
„ 400,000	„	500,000	..	6,000	0	..	9,000	0
„ 500,000	„	600,000	..	7,500	0	..	11,250	0
„ 600,000	„	700,000	..	9,000	0	..	13,500	0
„ 700,000	„	800,000	..	10,500	0	..	15,750	0
„ 800,000	„	900,000	..	12,000	0	..	18,000	0
„ 900,000	„	1,000,000	..	13,500	0	..	20,250	0
Above 1,000,000 for every 100,000 and any fractional part of 100,000				1,500	0	..	2,250	0

The 27 & 28 Vict. c. 56 exempts Probates and Letters of Administration from Stamp Duty, where the whole estate of the person, dying after July 25, 1864, shall not exceed £100.

(2) *From April* 1, 1880, *to May*, 1881 (43 *Vict. c.* 14).

	£		£			Duty. £
Above the value of	100	and under	200	..	..	2
Of the value of	200	„	300	..	..	4
„ „	300	„	400	..	..	6
„ „	400	„	500	..	..	9
„ „	500	„	600	..	..	11
„ „	600	„	800	..	..	15
„ „	800	„	1,000	..	..	22
„ „	1,000	„	1,500	..	..	30
„ „	1,500	„	2,000	..	..	40
„ „	2,000	„	3,000	..	..	62
„ „	3,000	„	4,000	..	..	88
„ „	4,000	„	5,000	..	..	113
„ „	5,000	„	6,000	..	..	140
„ „	6,000	„	7,000	..	..	165
„ „	7,000	„	8,000	..	..	190

SCALES OF DUTY—*continued.*

	£		£		Duty. £
Of the value of	8,000	and under	9,000	.. ..	215
„ „	9,000	„	10,000	.. ..	240
„ „	10,000	„	12,000	.. ..	275
„ „	12,000	„	14,000	.. ..	325
„ „	14,000	„	16,000	.. ..	375
„ „	16,000	„	18,000	.. ..	425
„ „	18,000	„	20,000	.. ..	475
„ „	20,000	„	25,000	.. ..	565
„ „	25,000	„	30,000	.. ..	690
„ „	30,000	„	35,000	.. ..	815
„ „	35,000	„	40,000	.. ..	940
„ „	40,000	„	45,000	.. ..	1,065
„ „	45,000	„	50,000	.. ..	1,190
„ „	50,000	„	60,000	.. ..	1,375
„ „	60,000	„	70,000	.. ..	1,625
„ „	70,000	„	80,000	.. ..	1,875
„ „	80,000	„	90,000	.. ..	2,125
„ „	90,000	„	100,000	.. ..	2,375
„ „	100,000	„	120,000	.. ..	2,750
„ „	120,000	„	140,000	.. ..	3,250
„ „	140,000	„	160,000	.. ..	3,750
„ „	160,000	„	180,000	.. ..	4,250
„ „	180,000	„	200,000	.. ..	4,750
„ „	200,000	„	250,000	.. ..	5,625
„ „	250,000	„	300,000	.. ..	6,875
„ „	300,000	„	350,000	.. ..	8,125
„ „	350,000	„	400,000	.. ..	9,375
„ „	400,000	„	500,000	.. ..	11,250
„ „	500,000 and upwards, then in addition to the said duty of £11,250 for every full sum of £100,000 in excess of £500,000, and also for any fractional part of £100,000 so in excess				£2,500

(3) *Since June* 1, 1881 (44 *Vict. c.* 12).

	£		£		£	s.	
Probate of will or letters of administration, where the value of the estate does not exceed £100 ..					Exempt.		
Above	100	and not above	150	.. ..	3	0	
„	150	„	200	.. ..	4	0	
„	200	„	250	.. ..	5	0	
„	250	„	300	.. ..	6	0	(*a*)
„	300	„	350	.. ..	7	0	
„	350	„	400	.. ..	8	0	
„	400	„	450	.. ..	9	0	
„	450	„	500	.. ..	10	0	
„	500	„	550	.. ..	13	15	
„	550	„	600	.. ..	15	0	
„	600	„	650	.. ..	16	5	
„	650	„	700	.. ..	17	10	

(*a*) See also "Fixed Duties."

SCALES OF DUTY—*continued.*

£		£	£	s.
Above 700	and not above	750	.. ..	18 15
„ 750	„	800	.. ..	20 0
„ 800	„	850	.. ..	21 5
„ 850	„	900	.. ..	22 10
„ 900	„	950	.. ..	23 15
„ 950	„	1,000	.. ..	25 0
„ 1,000	„	1,100	.. ..	33 0
„ 1,100	„	1,200	.. ..	36 0
„ 1,200	„	1,300	.. ..	39 0
„ 1,300	„	1,400	.. ..	42 0
„ 1,400	„	1,500	.. ..	45 0
„ 1,500	„	1,600	.. ..	48 0
„ 1,600	„	1,700	.. ..	51 0
„ 1,700	„	1,800	.. ..	54 0
„ 1,800	„	1,900	.. ..	57 0
„ 1,900	„	2,000	.. ..	60 0
„ 2,000	„	2,100	.. ..	63 0
„ 2,100	„	2,200	.. ..	66 0
„ 2,200	„	2,300	.. ..	69 0
„ 2,300	„	2,400	.. ..	72 0
„ 2,400	„	2,500	.. ..	75 0
„ 2,500	„	2,600	.. ..	78 0
„ 2,600	„	2,700	.. ..	81 0
„ 2,700	„	2,800	.. ..	84 0
„ 2,800	„	2,900	.. ..	87 0
„ 2,900	„	3,000	.. ..	90 0
„ 3,000	„	3,100	.. ..	93 0
„ 3,100	„	3,200	.. ..	96 0
„ 3,200	„	3,300	.. ..	99 0
„ 3,300	„	3,400	.. ..	102 0
„ 3,400	„	3,500	.. ..	105 0
„ 3,500	„	3,600	.. ..	108 0
„ 3,600	„	3,700	.. ..	111 0
„ 3,700	„	3,800	.. ..	114 0
„ 3,800	„	3,900	.. ..	117 0
„ 3,900	„	4,000	.. ..	120 0

And for every additional full sum of £100, and for any fractional part of £100 over any multiple of £100 .. .. .. £3

SCOTCH PATENTS.

Chargeable with duty as personal estate (*Advocate-General* v. *Oswold*, 10 Sco. Sess. Ca. 2nd Ser. 969).

SCOTLAND.

The statutes containing the principal regulations for the management and collection of Inventory Duty (the equivalent of the Probate and Administration Duty).

44 Geo. 3, c. 98, s. 23;
48 Geo. 3, c. 149, s. 38;
16 & 17 Vict. c. 59, s. 9;
21 & 22 Vict. c. 56, s. 9;

SCOTLAND—*continued.*

23 & 24 Vict. c. 80, ss. 1–9;
43 Vict. c. 14, ss. 9, 10;
44 Vict. c. 12, ss. 26, 27, 28, 34–37.
Finance Acts, 1894, 1896, 1898.

Confirmation is the ceremony corresponding to probate.

Money secured on heritable property in Scotland is chargeable with Probate Duty (23 & 24 Vict. c. 80, s. 1).

SECRET TRUST.

S. 8 of 16 & 17 Vict. c. 51 enacts that a disposition taking effect at a period ascertainable only by reference to death of a person dying on or after May 19, 1853, or purporting to operate under such circumstances as not to confer a succession, if, in consequence of a SECRET TRUST or arrangement capable of being enforced at law or in equity, the beneficial ownership of such property shall not *bonâ fide* pass according to such disposition, but shall in fact devolve to any person on death, or at some period ascertainable only by reference to death, confers a succession derived from the person making the disposition as predecessor; and a disposition made for fraudulent evasion of duty may be declared by a Court to confer a succession.

The will alone determines what shall be a "legacy," and any SECRET TRUST outside the will does not change the legatee (*Cullen* v. *Attorney-General for Ireland*, L. R. 1 Eng. & Ir. H. L. App. 190).

SECURITY.

Where too little Administration Duty has been paid the administrator must give the proper security before the stamp on the letters of administration is rectified (55 Geo. 3, s. 184, c. 42; 56 Geo. 3, c. 56, s. 121, Ireland).

A certificate from the Probate Court to the effect that this provision has been complied with must be produced before such stamp can be rectified by the Commissioners.

The bond of security must now be given to the judge of the Court of Probate, and if required, with one or more surety or sureties, and should be for the whole value of the assets, and not merely for the excess of the increased value over the former value. See also "Certificate of Further Security."

SEPARATE ASSESSMENT.

Separate assessments may be made of the Succession Duty on the interest of the successor in separate properties (s. 43 of 16 & 17 Vict. c. 51), but in practice this course is not pursued unless a particular request for such separate assessment is made by the parties, and reasonable cause is shown that the circumstances of the case require it.

See also "Estate by itself."

SEPARATE LEGACIES. See "Cumulative Legacies."

SETTLED LAND ACT, 1882 (45 & 46 Vict. c. 38).

This Act confers upon a "tenant-for-life" (as to those who fall within this description, see ss. 58 and 59, also s. 8 of Settled Land Act, 1884) all the power of dealing with "settled land" (s. 2, sub-sections 3, 4) which a prudent owner would desire to exercise. It makes compulsory provisions which have been for a long

SETTLED LAND ACT—*continued.*

time inserted in most settlements, but which owing to timidity or want of interest were not frequently exercised by trustees.

The interests of the remainderman have been carefully safeguarded by placing restrictions upon the "tenant-for-life's" exercise of the powers conferred upon him (*e.g.* before exercising his power to sell, lease, etc., notice must be given to trustees, of whom there must be two, s. 45, and see s. 5 of Settled Land Act, 1884), and by securing for the benefit of the settlement the capital moneys arising (s. 21).

The powers given to a "tenant-for-life" cannot be assigned (s. 50), and a contract not to exercise any of them is void (*Cardigan* v. *Curzon Howe*, 33 W. R. 836), nor can he be prohibited from exercising them (s. 51). A "tenant-for-life" may by the leave of the Court sell settled heirlooms even although the trustees have an express power to do so (*Re Houghton Hall Estate*, 33 W. R. 869). The powers given by the Act are cumulative (s. 56); but in case there is any conflict between the provisions of a settlement and those of the Act as to such powers, the provisions of the Act are to prevail (*Re Houghton Hall Estate, supra.* Settlements may confer powers additional to or larger than those conferred by the Act (s. 57); but no settlor can empower the trustees to execute any of the powers given by the Act without the consent of the "tenant-for-life."

Although the "tenant-for-life" is required to give notice in exercising his statutory powers, he does not require any consent from the trustees, or from the remainderman, or from the Court, but acts independently of them. For certain purposes, however, he must obtain leave; for example, if he wishes to sell (or to lease) the principal mansion or demesnes (s. 18); or if, being tenant-for-life impeachable for waste, he wishes to cut the timber, he must obtain either the consent of the trustees or the leave of the Court. He must also obtain the leave of the Court to sell chattels settled to go with the land (s. 37).

See further, Elphinstone on Conveyancing.

SETTLEMENT.

(*a*) Marriage settlement, and liability thereunder to **Succession Duty,** see "Succession Duty."

(*b*) Voluntary settlement, and liability thereunder to **Succession** and **Account Stamp Duty,** see "Voluntary Settlement."

(*c*) **Estate Duty** (Finance Act, 1894).

The expression "settled property" means property comprised in a settlement (s. 22 (1 *h*)).

The expression "settlement" means any instrument, whether relating to real property or personal property, which is a settlement within the meaning of s. 2 of the Settled Land Act, 1882 (45 & 46 Vict. c. 38), or if it related to real property would be a settlement within the meaning of that section, and includes a settlement effected by a parol trust (s. 22 (1 *i*)).

The first seven sub-sections of s. 2 of the Settled Land Act, 1882 (45 & 46 Vict. c. 38), are as follows:—

1. Any deed, will, agreement for a settlement, or other agreement, covenant to surrender, copy of court roll, Act of Parliament, or other instrument, or any number of instruments, whether made or passed before or after, or partly before or partly after, the commencement of this Act, under or by virtue of which instrument or instruments any land, or any

SETTLEMENT—*continued.*

estate or interest in land, stands for the time being limited to or in trust for any persons by way of succession, creates or is for purposes of this Act a settlement, and is in this Act referred to as a settlement, or as the settlement, as the case requires.

2. An estate or interest in remainder or reversion not disposed of by a settlement, and reverting to the settlor or descending to the testator's heir, is for purposes of this Act an estate or interest coming to the settlor or heir under or by virtue of the settlement, and comprised in the subject of the settlement.
3. Land, and any estate or interest therein, which is the subject of a settlement, is for purposes of this Act settled land, and is, in relation to the settlement, referred to in this Act as the settled land.
4. The determination of the question whether land is settled land, for purposes of this Act, or not, is governed by the state of facts, and the limitations of the settlement, at the time of the settlement taking effect.
5. The person who is for the time being, under a settlement, beneficially entitled to possession of settled land, for his life, is for purposes of this Act the tenant-for-life of that land, and the tenant-for-life under that settlement.
6. If, in any case, there are two or more persons so entitled as tenants in common, or as joint tenants, or for other concurrent estates or interests, they together constitute the tenant-for-life for purposes of this Act.
7. A person being tenant-for-life within the foregoing definitions shall be deemed to be such, notwithstanding that, under the settlement or otherwise, the settled land or his estate or interest therein is encumbered or charged in any manner or to any extent.

Composite or Compound Settlements.

See *In re Marquis of Ailesbury and Lord Iveagh* (1893), 2 Ch. 345 (four deeds); *In re Mundy's Settled Estate* (1891), 1 Ch. 399; *In re Byng's Settled Estate* (1892), 2 Ch. 219 (deed and will); *In re Lord Stamford's Settled Estate*, 43 Ch. D. 84; *In re Freme* (1894), 1 Ch. 1; *ex parte Vicar of Castle Betham, etc.* (1895), 1 Ch. 348 (Award and Lands' Clauses Act); *Vine* v. *Raleigh* (1896), 1 Ch. 37 (Thellusson's Act and will).

Derivative settlements of interests not yet in possession are disregarded, *In re Knowles' Settled Estate*, 27 Ch. D. 707.

See Brett's Equity, 3rd ed. p. 116.

SETTLEMENT ESTATE DUTY.

Where property in respect of which Estate Duty is leviable is **settled** by the will of the deceased, or having been settled by some other disposition, passes under that disposition on the death of the deceased **to some person not competent to dispose** of the property—

(*a*) A further Estate Duty (called **Settlement Estate Duty**) on the **principal value** of the settled property shall be levied at the rate hereinafter specified, **except** where the only life interest in the property after the death of the deceased is that of a **wife or husband** of the deceased; but

(*b*) During the continuance of the settlement the Settlement Estate Duty shall **not be payable more than once** (s. 5 (1), Finance Act, 1894).

SETTLEMENT ESTATE DUTY—*continued.*

As to the meaning of the expressions "settled property," "settlement," see "Settlement."

Collection of the Duty.

"It seems to me that for the purposes of the Act the provision for payment of the Settlement Estate Duty is covered by the provision for payment of the Estate Duty. If it is not, I cannot find in the Act any provision that the Settlement Estate Duty is to be paid by any person whatever," *per* North, J., *In re Webber, Gribble* v. *Webber* (1896), 1 Ch. 914.

Incidence where the personal property liable is settled by will.

1. The Settlement Estate Duty leviable in respect of a legacy or other personal property settled by the will of the deceased shall (unless the will contains an express provision to the contrary) be **payable out of the settled legacy or property** in exoneration of the rest of the deceased's estate.
2. The Settlement Estate Duty leviable in respect of any such legacy or property shall be **collected upon an account**, setting forth the particulars of the legacy or property, and delivered to the Commissioners by the executors **within six months after the death**, or within such further time as the Commissioners may allow (s. 19 of Finance Act, 1896).

Value.

The value of the settled property for assessment to Settlement Estate Duty, in all cases, is, having regard to ss. 5 (1 *a*) and 7 (5) of the Finance Act, to be determined as **at the date of the death** of the person on whose decease the claim to duty arose.

Out of what fund payable.

Out of the general residuary estate (by virtue of s. 6) and not out of the settled fund itself, apart from any expressed direction of the testator, where the fund has been settled by will. Where the whole residue is settled or where the testator has directed that the fund shall exonerate the general residue, the Legacy Duty (if any) payable is to be calculated after deduction of Settlement Estate Duty; but see s. 19 of Finance Act, 1896 (*supra*).

When payable.

In all cases where the property is settled upon a contingency the duty is payable at the time of the death of the person upon whose death the property passes, and this applies to cases where a testator leaves property (with or without a life interest to his widow) in trust for such of his children as shall attain a given age, the shares of daughters to be held in trust for them for life with limitations over, assuming that at the testator's death no son has attained the given age and that a daughter is then living. In such a case there is a contingent life interest which may extend to the whole property, and that, therefore, Settlement Estate Duty is payable on the whole; but see "Contingent Settlement."

Limitation of claim.

The claim for Settlement Estate Duty is confined to the part which is settled upon trust (whether vested or contingent) which entitles the Crown to claim such duty.

Apportionment of the duty between settled legacies and residue.

Where a testator by his will settles pecuniary legacies and shares of residue, no part of either the Estate Duty or the Settlement Estate Duty imposed

SETTLEMENT ESTATE DUTY—*continued.*

by the Finance Act, 1894, is to be borne by the settled legacies or shares, but the whole of those duties is to be borne by the general residue of the estate (*In re Webber, Gribble* v. *Webber, supra*).

Example.

The testator dies on Jan. 1, 1895.

	£	s.	d.
Gross value of free estate	13,291	0	0
Debts and funeral expenses	724	6	2
	12,566	13	10
Estate Duty on £12,570 at 4 per cent.	502	16	0
	12,063	17	10
Executorship expenses	314	0	0
	£11,749	17	10
Legacies are given as follows—			
Not settled	3090	0	0
Settled	4100	0	0
Settlement Estate Duty on latter	41	0	0
	7231	0	0
Residue	£4518	17	10

Two of the six shares of residue are settled.

$\frac{2}{6}$ or $\frac{1}{3}$ = £1506 5*s.* 11*d.*

Settlement Estate Duty on £1510 = £15 2*s.*

Residue	4518	17	0
Less Settlement Estate Duty	15	2	0
Amount chargeable with Legacy Duty	£4503	15	10

But see Finance Act, 1896, s. 19 (*supra*).

Examples.

(i.) A., dying after Aug. 1, 1894, bequeaths—

(*a*) £10,000 to trustees upon trust to pay the income to his daughter B. for life so long as she shall continue unmarried, and, on her marriage, to pay her the *corpus* absolutely, or, on her death unmarried, to hold on the same trusts declared of the general estate.

(*b*) His general estate to trustees upon trust for C. his grandson absolutely; but should C. die under twenty-one, or without barring the entail of the family estates within a year of attaining twenty-one, then to D. (A.'s second son) for life, with remainders over.

In case (*a*) there is a life interest which comes into existence immediately on the death of the deceased, although it is defeasible on the happening of an event other than death.

In case (*b*) the gift is to C. absolutely, with an executory gift over in certain contingencies, and neither in form nor in substance is there a "settlement" as from the death of the deceased.

The duty is claimed in both cases. But see "Contingent Settlement."

SETTLEMENT ESTATE DUTY—*continued.*

(ii.) A., dying after Aug. 1, 1894, bequeaths an annuity to B. for life, and—

(*a*) Directs a sum to be set apart to meet the annuity. Here the sum set apart is treated, in practice, as "property settled by the will of the deceased," and Settlement Estate Duty is claimed in respect thereof, for the effect of the direction in the will is to give the annuitant the life interest on the fund. Also claimed where the direction is to set apart a fund or purchase an annuity, and the former alternative is adopted.

(*b*) The annuity being given *simpliciter*, and not falling to be paid out of the income of property itself settled, with no direction as to how it is to be raised or paid, or with a mere power (not an imperative direction) to trustees to set apart a sum to meet it. Here Settlement Estate Duty is not leviable, notwithstanding that as a matter of fact a sum is set apart for this purpose.

(*c*) On the other hand, where property is "settled by the will of the deceased," and the trustees, in the exercise of a power, take it out of the settlement, by advancing a part or the whole to the tenant-for-life, the property at the death of the deceased is settled and Settlement Estate Duty is leviable notwithstanding the exercise of the power.

(iii.) **Successive annuities.**

X., who dies after Aug. 1, 1894, bequeaths an annuity to A. for life, and on the death of A. another annuity $\left.\begin{matrix}=\\<\\>\end{matrix}\right\}$ the first annuity to B. for life.

No Settlement Estate Duty payable, because the annuity for the time being payable cannot be taken as "standing for the time being limited to or in trust for persons by way of succession."

Where Settlement Estate Duty is not payable.

1. Where the only subsisting life interest is that of the wife or husband of the deceased (s. 5, Finance Act, 1894).
2. Where the duty has already been paid since the settlement (s. 5).
3. Where the land is settled by Act of Parliament or Royal grant, so as to be inalienable (s. 5).
4. Where the property is settled by a disposition taking effect before Aug. 2, 1894 (s. 21).

   Disposition (D) took effect before Aug. 2, 1894; and under this disposition the tenant-for-life (T.) had a general power of appointment. T. exercised the power so as to create a settlement by a disposition taking effect after Aug. 1, 1894. The property passing is treated as passing under disposition (D), and so exempt under s. 21 (4).
5. Where the net value of deceased's property, other than that settled otherwise than by the will, **does not exceed £1000**, and the *ad valorem* or fixed Estate Duty has been paid (s. 16 (3)).

SHARES. See "Stocks and Shares."

SHELLEY'S CASE. See "Rule in Shelley's Case."

SHIPS.

Ships registered at any port of the United Kingdom (27 & 28 Vict. c. 56, s. 4) are there situate and are liable to Probate Duty (and Legacy Duty) as is also

SHIPS—*continued.*

property on the high seas capable of being dealt with here by Bills of Lading in this country (*Attorney-General* v. *Hope*, 1 Cr. M. & Rosc. 530).

British ships are held in shares, of which there are sixty-four, and sixty-four individuals may now be registered as owners (43 & 44 Vict. c. 18).

A registered ship or any share therein is transferred by bill of sale.

An alien cannot be the owner of a British ship (33 Vict. c. 14, s. 14).

As to liability to Estate Duty, see "Finance Act, 1894" (ss. 1, 2 (2)).

SIERRA LEONE.

Date of Order in Council (Finance Act, 1894), Feb. 8, 1896.

Death Duty Act: "The Stamp Duty Ordinance, 1884" (47 Vict. No. 1, 1884).

(1) Stamp duty upon representation.

	Scale.
Personal property (in the Possession)—	
Not over £20	Nil.
„ £50	10*s.*
„ £100	20*s.*
For every additional £50, or part thereof ..	10*s.*

(2) Stamp duty upon receipts for legacies, residues and shares thereof.

	Scale.
Under £50	Nil.
Not over £100	20*s.*
„ £200	30*s.*
For every additional £100, or part thereof ..	10*s.*

Husband, wife, or child exempt.

SISTER.

Chargeable to Legacy Duty at the rate of 3 per cent. (55 Geo. 3, c. 184, Sch. Part III.), and to Succession Duty at the rate of 3 per cent. (16 & 17 Vict. c. 51, s. 10) or 4½ per cent. (51 Vict. c. 8, s. 21); but see "Additional Succession Duty" and "Small Estates," *infra.*

SITUS. See "Locality."

SMALL ESTATES.

I. *Probate Duty.*

A fixed duty of 30*s.* may be paid where the gross personal estate and effects (English and foreign) of any person **dying on or after June 1, 1881,** without any deduction for debts and funeral expenses, shall not exceed the value of £300 (s. 33 of 44 Vict. c. 12).

The payments of the fixed duty of 30*s.* shall be deemed in full satisfaction of any claim to Legacy Duty or Succession Duty in respect of such estate or effects (s. 36).

II. *Estate Duty* (Finance Act, 1894).

Where the GROSS value of the property real and personal on which Estate Duty is payable on the death of the deceased exclusive of property settled otherwise than by the will of the deceased exceeds £100, but does not exceed £300, a fixed duty of 30*s.* *may be* paid, and where it exceeds £300 but does not exceed £500, a fixed duty of 50*s.* *may be* paid (s. 16 (1)). Where the fixed duty of 30*s.* or 50*s.* has been paid, and it turns out that the gross

SMALL ESTATES—*continued.*

value of the property exceeded £500, the *ad valorem* duty according to the true value is payable, and the fixed duty, unless wrongly paid under a misunderstanding, is forfeited. Where 30*s.* has been paid and it is discovered that 50*s.* should have been paid, the difference only is payable. (See s. 16 (1) embodying and extending the Customs and Inland Revenue Act, 1881 (44 Vict. c. 12), s. 35.)

Where the assistance of the local Inland Revenue Officer is not required, the *ad valorem* duty according to the scale may be paid instead of the fixed duty of 30*s.* or 50*s.* (s. 16 (2), and s. 16 (1), embodying and extending the Customs and Inland Revenue Act, 1881, s. 33). Where the net Estate is small it may be found that the *ad valorem* duty is less in amount than the fixed duty.

Where the **net value** (*a*) **of the property real and personal,** on which Estate Duty is payable on the death of the deceased, exclusive of property settled otherwise than by the will, if any, of the deceased, **does not exceed £1000,** and the fixed duty or *ad valorem* Estate Duty has been paid (*b*) upon the principal value of that estate, the **Settlement Estate Duty and the Legacy** (*c*) **and Succession Duties are not payable** under the will or intestacy of the deceased in respect of that estate (s. 16 (3)).

Gifts *mortis causâ*, and other gifts *inter vivos* made within twelve months of the death, but not exceeding in each case £100 in value, must be considered in determining whether a grant may be made under s. 16 (1) of the Finance Act, 1894.

As to cases where representation is unnecessary in small estates, see Hanson's "Death Duties," 4th ed. p. 166.

See also "Fixed Duties," "Small Estates."

SOLICITOR.

Where a suit is instituted concerning administration, the Court is to provide for payment of the duty (36 Geo. 3, c. 52, s. 25), and it is the duty of the solicitor concerned to see that such provision is made (see Lord Cranworth's dictum (*d*) in *Bryan* v. *Mansion*, 3 Jur. N.S. 475).

13 & 14 Vict. c. 97, s. 8, provides that any person who receives money for the duty upon any legacy or residue shall be accountable for the amount as a debt due to the Crown, and when once the money has been received by any person as

(*a*) Including gifts *inter vivos* within twelve months of death, donations *mortis causâ*, deceased's severable share of property held in joint tenancy; money which he had a general power to charge on land, where exercised; also any annuity or other interest purchased or provided by the deceased, &c., to the extent of the beneficial interest accruing on his death; also policies on the life of the deceased kept up by him for a donee, s. 2 (1) (*c*) and (*d*).

(*b*) Therefore the Estate Duty on any real estate must be paid in full, and not by instalments, and payment of duty on interests in expectancy must not be deferred until the interest falls into possession.

(*c*) The exemption is conceded in practice to donations *mortis causâ*, and deceased's severable share of property held in joint tenancy.

(*d*) "The solicitor, having the Act of Parliament before him, knows that the Court has no power to make an order paying away a legacy, or the amount of a legacy, or an annuity without first providing for the duty. That is what the legislature has imposed as a duty upon the Court; and therefore any solicitor who makes himself auxiliary to getting out money which is, in truth, a legacy—letting the Court make the order in ignorance—make it improperly, not providing for payment of the Legacy Duty—is, I think, auxiliary in enabling the Court to commit an act of injustice, and I think he is certainly highly to be reprehended."

SOLICITOR—*continued.*

and for Legacy Duty, the Revenue has a direct claim upon him in respect of it, and he cannot return the money to the executor or appropriate it to any other purpose than that for which he received it (*Attorney-General* v. *Wenham*, Ex. 12 Jan., 1869, cited Hanson, 4th ed. p. 399). See also *Horn* v. *Coleman* (26 L. J. Ch. 213).

A declaration in a will that a solicitor who is an executor or trustee of the will may charge profit costs for work done for the testator's estate confers a beneficial gift or interest on him within s. 15 of the Wills Act, and is therefore void where the solicitor-trustee has been one of the attesting witnesses (*In re Pooley*, 40 Ch. D. 1, 37 W. R. 17; *Re Barber*, 31 Ch. D. 665; *Thorley* v. *Massam*, 39 W. R. 233).

In the absence of a provision in a deed or will that a solicitor-trustee may charge for professional services, he cannot charge for non-contentious business done by him in relation to the trust, except for out-of-pocket expenses (*Moore* v. *Frowd*, 3 M. & C. 45). It is otherwise where there is a provision enabling him to charge costs for transaction of such business (*Burgess* v. *Vinnicombe*, 34 Ch. D. 77); but even with such a provision he cannot charge for transactions which a trustee should effect without the intervention of a solicitor (*Harbin* v. *Darby*, 28 B. 325; *In re Fish*, *Bennett* v. *Bennett* (1893) 2 Ch. 413).

A solicitor-trustee may, however, be employed by his co-trustees to defend an action, and may recover his professional charges from the trust funds, even in the absence of express authority (*Cradock* v. *Piper*, 1 M. & C. 664).

A testator appointed A., B., and C. as trustees and executors of his estate, one of whom (A.) was a solicitor. A. proved the will, the other two renouncing probate. The will empowered A., notwithstanding his executorship, to make professional charges. In a creditor's action defended by A. in person, the estate being insolvent; *Held*, that A. was not entitled to his profit costs, as the power to charge was equivalent to a legacy which could not take effect as against the creditors (*Re White*, 77 L. T. 793).

A payment for Probate Duty made by a solicitor on behalf of his client is a "disbursement" within the meaning of s. 37 of the Solicitors Act, 1843 (6 & 7 Vict. c. 73), and is properly included in his bill of costs (*Re Lamb*, 23 Q. B. D. 5): though a payment for Legacy Duty is not (*Re Haigh*, 12 B. 307). (See Hanson's "Death Duties," 4th ed. p. 354.)

SON

Chargeable to Legacy Duty (55 Geo. 3, c. 184, Sch. Part III.) at the rate of 1 per cent. (but see s. 41 of 44 Vict. c. 12), and to Succession Duty at the rate of 1 per cent. (s. 10 of 16 & 17 Vict. c. 51) and 1½ per cent. (s. 21 of 51 Vict. c. 8). See "Lineals."

Exempt from Legacy and Succession Duty where death of "deceased" (testator, intestate, or tenant-for-life) takes place on or after Aug. 2, 1894, in respect of property on which Estate Duty is payable; see "Exemptions."

SON-IN-LAW. See "Lineals."

SOUTH AUSTRALIA.

Date of Order in Council (Finance Act, 1894, May 11, 1895).

Death Duty Act: "The Succession Duties Act, 1893" (56 & 57 Vict. No. 567).

The duty, which is a Succession Duty, is imposed on property derived from a deceased person, where such property comprises, or is part of, or is payable out

SOUTH AUSTRALIA—*continued.*

of (*a*) real property of the deceased in the Province; (*b*) his personal property, wherever situate, provided deceased was, at his death, domiciled in the Province; (*c*) personal property within the Province, including debts, money and choses in action receivable or recoverable by the administrator of the Province where the domicile of the deceased was foreign.

Value of Property Liable to the Duty.	Rate of Duty per cent.
(*a*) Where the net present value of property passing to any widow, widower, descendant or ancestor of the deceased person or settlor or donor:	
£ £	
Exceeds 500 and does not exceed 700	1½*
„ 700 „ „ 1,000	2 *
„ 1,000 „ „ 2,000	3 *
„ 2,000 „ „ 3,000	3½
„ 3,000 „ „ 5,000	4
„ 5,000 „ „ 7,000	4½
„ 7,000 „ „ 10,000	5
„ 10,000 „ „ 15,000	5½
„ 15,000 „ „ 20,000	6
„ 20,000 „ „ 30,000	6½
„ 30,000 „ „ 40,000	7
„ 40,000 „ „ 60,000	7½
„ 60,000 „ „ 80,000	8
„ 80,000 „ „ 100,000	8½
„ 100,000 „ „ 150,000	9
„ 150,000 „ „ 200,000	9½
„ 200,000	10
(*b*) Where the net present value of the property passing to a brother, sister, descendant of brother or sister, or any person in any other degree of collateral consanguinity to the deceased person, donor or settlor:	
£ £	
Does not exceed 200	1
Exceeds .. 200 but does not exceed 300	1½
„ .. 300 „ „ 400	2
„ .. 400 „ „ 700	3
„ .. 700 „ „ 1,000	3½
„ .. 1,000 „ „ 2,000	4
„ .. 2,000 „ „ 3,000	5
„ .. 3,000 „ „ 5,000	6
„ .. 5,000 „ „ 10,000	7
„ .. 10,000 „ „ 15,000	8
„ .. 15,000 „ „ 20,000	9
„ .. 20,000	10

A stranger in blood pays at the rate of 10 per cent. in all cases.

SPECIAL OCCUPANT.

An estate *pur autre vie* (*q.v.*) is granted to A. and his heirs. A. dies in the lifetime of the *cestui que vie*, and his heir B. is deemed to take the estate not as heir,

* A widow or child under 21 pays half these rates.

SPECIAL OCCUPANT—*continued.*

but as special occupant, that is one specially pointed out by the terms of the grant to occupy the land. An estate *pur autre vie* may be limited to the executors and administrators of the grantee as special occupant (*Ripley* v. *Waterworth*, 7 Ves. 425), in which case they hold the estate as personalty of the deceased grantee (Wills Act, s. 6).

SPECIALTY DEBT.

Priority of specialty over simple contract debts abolished by 32 & 33 Vict. c. 46 (Hinde Palmer's Act, 1869).

"For the purposes of the Stamp Duties on probates of wills and letters of administration, debts and sums of money due and owing from persons in the United Kingdom to any deceased person at the time of his death on obligation or other specialty, shall be estate and effects of the deceased within the jurisdiction of Her Majesty's Court of Probate in England or Ireland, as the case may be, in which the same would be if they were debts owing to the deceased upon simple contract, without regard to the place where the obligation or specialty shall be at the time of the death of the deceased" (25 & 26 Vict. c. 22, s. 39).

Specialty debts, therefore, due from persons resident in the United Kingdom are assets in this country and liable to Probate Duty. Where, however, due from foreigners, they are not assets here, and are therefore not liable to Probate Duty, although the securities may be in this country. Foreign securities of a chattel nature, and transferable or saleable in this country, may, however, be assets here.

See further, "Debts;" "Locality."

SPECIFIC ARTICLES.

Bequests of SPECIFIC ARTICLES, where the legatee takes legacies or shares of residue in the aggregate under £20 in amount or value, are exempt from Legacy Duty (55 Geo. 3, c. 184, Sch. Part III.), s. 42 of 44 Vict. c. 12 only applying to pecuniary legacies and shares of residue.

Examples.

(*a*) plate, value £18, to C.
(*b*) plate (£10) and £9, to D.
(*c*) plate (£14) and £6, to E.

In (*a*) and (*b*) the plate is exempt from duty.

Bequests of plate, furniture, etc., given to different persons in succession, are not liable to Legacy Duty till in possession of persons having power to dispose thereof, or until sold (36 Geo. 3, c. 52, s. 14).

Where Legacy Duty is offered on specific articles, an appraisement or valuation, to be filed with the legacy receipt or residuary account, should be produced.

Such valuation being, however, a matter of estimate is not regarded as final; so that where a sale is subsequently effected before the administration of the estate has been brought to a conclusion, and a sum is realized in excess of the valuation, additional Legacy Duty may be payable, also additional Estate Duty where the death was on or after Aug. 2, 1894, or additional Probate Duty where the death was before that date.

SPECIFIC LEGACY.

A specific legacy is a gift of some severed or distinguished portion of the testator's estate; for example, a particular thing, or a particular sum of money, as distinguished from all others of the same kind.

SPECIFIC LEGACY—*continued.*

A specific legacy does not abate till after the general legacies are exhausted and they have priority even over demonstrative legacies, where the primary fund has ceased to exist; but it is liable to ademption by the testator in his lifetime. A legacy may, however, be specific and yet not liable to ademption; for example, where a testator specifically bequeaths the stock he may die possessed of (*Fountaine* v. *Tyler*, 9 Pr. 94).

Where a bequest is of a sum of money or stock it is sometimes difficult to decide whether the gift is general, demonstrative, or specific. In such a case the legacy will not be specific unless the special sum of money or stock so bequeathed is in existence at the date of the will, and it is clear that the testator refers to it as a distinct thing set aside from his general estate, and intends that that particular sum of money or stock shall pass.

The gift of a specific legacy carries with it everything incident to the subject-matter of the gift; for example (1) **bonuses** (*Maclaren* v. *Stainton*, 3 De G. F. & J. 202) and **dividends** (*Bates* v. *Mackinley*, 31 Beav. 280) declared after testator's death upon shares specifically bequeathed (*a*); not so, however, bonuses declared in his lifetime, but payable after his death (*Lock* v. *Venables*, 27 Beav. 598); (2) **liabilities**, if arising after testator's death (*Adams* v. *Fenrick*, 26 Beav. 384), but as to payments necessary to complete testator's interest in the subject-matter, see *Armstrong* v. *Burnet*, 20 Beav. 424.

A specific legatee has a right to have his legacy freed from charges created by the testator (as distinguished from charges incidental to the property) at the expense of the testator's general personal estate, or to have compensation out of it (*Bothamley* v. *Sherson*, 20 Eq. 304).

A specific devisee takes gifts of real property (or leaseholds) *cum onere* in the absence of contrary intention. See "Locke King's Act."

Specific legacies carry interest from the death, and this notwithstanding the enjoyment of the legacy is postponed by the testator (*Bristowe* v. *Bristowe*, 5 Beav. 289).

Examples of specific gifts.

Articles of value: for example, a certain horse (*b*); a piece of furniture or plate; a certain sum of money in a certain bag (*Lawson* v. *Stitch*, 1 Atk. 508), or in the hands of a certain person (*Hinton* v. *Priske*, 1 P. Wms. 540).

"My capital of £1000 in the India Company's Stock" (*Ashburner* v. *McGuire*, 2 Bro. C. C. 108).

"All my moneys" (*Manning* v. *Purcell*, 2 Sm. & G. 284; 7 De G. M. & G. 55).

"The" £7000 out on mortgage (*Gardner* v. *Hatton*, 6 Sim. 93) (*c*).

A gift of stock or securities described as "my stock" or "my securities" (*Bothamley* v. *Sherson*, 20 Eq. 304).

A gift of money "out of" specific money, and of stock "out of" specific stock (*Drinkwater* v. *Falconer*, 2 Ves. Sen. 623).

(*a*) This decision was before the Apportionment Act (*q.v.*) came into operation.

(*b*) Where testator bequeaths "my grey horse," and no such horse ever existed among the testator's effects, the legacy fails, whereas if the bequest is of "a horse," and no horse is found to be in the testator's possession at the time of his death, the executor must procure a horse for the legatee provided the state of the assets will admit of it (Williams's "Executors," 9th ed.).

(*c*) But where a sum of money is given and the mortgage is merely mentioned as descriptive of the then situation of the money, the legacy is not specific, but general (*LeGrice* v. *Finch*, 3 Meriv. 50).

SPECIFIC LEGACY—*continued.*

A gift of money out of stock is, however, demonstrative, and not specific (*Kirby* v. *Potter*, 4 Ves. 750).

"My note of £500 owing from A." (*Drinkwater* v. *Falconer*, 2 Ves. Sen. 623).

"My East India Bonds" (*Sleech* v. *Thorington*, 2 Ves. Sen. 562, 563).

The money due on A.'s bond (*Davies* v. *Morgan*, 1 Beav. 405).

"The money now owing to me from A." (*Ellis* v. *Walker*, Amb. 309).

A gift of part of a debt to A., and the "remainder" or "residue" to B. Both gifts are specific (*Ford* v. *Fleming*, 2 P. Wms. 469).

"I give to my son £10,000 sterling, being my share of the capital now engaged in the banking business of, etc.," held to be a demonstrative and not a specific legacy (*Sparrow* v. *Josselyn*, 16 Beav. 135).

A bequest of a certain amount of stock with a direction that if the testator should not have sufficient stock standing in his name to answer the legacy, his executors should purchase enough to make up the deficiency (*Townsend* v. *Martin*, 7 Hare, 471).

A bequest of named stock in general terms to trustees upon trust to sell, and the testator possesses some of the stock named (*Ashton* v. *Ashton*, 3 P. Wms. 384).

A legacy of £2000 stock is not specific, although testator has that precise amount at the date of the will; where, however, he gives a legacy of stock generally, and then gives the rest of the stock "standing in my name," the earlier legacies will be specific (*Sleech* v. *Thorington*, 2 Ves. Sen. 560; *Millard* v. *Bailey*, L. R. 1 Eq. 378).

A bequest of a term of years.

Devise of land, though by way of residue (*Lancefield* v. *Iggulden*, 10 Ch. 136).

A direction to pay a legatee out of a particular estate is specific (*Spurway* v. *Glynn*, 9 Ves. 483).

Gift of rent-charge to be paid out of land with powers of distress is specific (*Long* v. *Short*, 1 P. Wms. 403); but if the testator shows an intention to give the legatee an annuity at all events, the legacy will not be specific, though directed to be paid out of an estate or the rents thereof. Should the fund therefore fail out of which the bequest is directed to be paid the legatee will be entitled to be paid out of the general personal estate (*Mann* v. *Copland*, 2 Mad. 223).

A gift of land (whether freehold or leasehold) upon trust to sell and the proceeds to be divided among certain persons makes them specific legatees (*Page* v. *Leapingwell*, 18 Ves. 463).

Specific things enumerated in a bequest of residue, when distinguished from the residue by such words as "as well as," or "together with," "and also," etc., are specific and not residuary (*Clarke* v. *Butler*, 1 Mer. 304).

See further, Theobald on Wills, 4th ed.; Williams's "Executors," 9th ed.

Legacy Duty.

S. 22 of the Legacy Duty Act (36 Geo. 3, c. 52) enacts that—

In cases of **specific legacies**, and where the residue of any personal estate shall consist of property which shall not be reduced into money, the executor may set a value thereon and tender the duty accordingly; and the Commissioners may accept the duty tendered or they may appoint a valuer.

Where sold "during the course of administration," and a greater sum is realized than that at which valued, further duty is payable in respect of the excess (*Attorney-General* v. *Dardier*, 11 Q. B. D. 16).

This section does not apply to reversionary interests.

SPECIFIC LEGACY—*continued.*

And s. 23 enacts that—

Duty on **legacies not satisfied in money**, etc., must be paid according to the value of the satisfaction.

The duty being payable on what the legatee actually receives (*Fischer* v. *Earl of Seafield*, 4 Sco. Sess. Ca. 1st Ser. 192; *Greville* v. *Greville*, 27 Beav. 396).

Estate Duty.

The Estate Duty on leaseholds specifically bequeathed comes out of the residue (*In re Culverhouse* (1896), 2 Ch. 251; 74 L. T. 347).

SPORTING RIGHTS.

The right of shooting, the right of fishing, etc., are liable as "real property" (incorporeal hereditaments) to Succession Duty (16 & 17 Vict. c. 51, s. 1), and duty is chargeable on the annual value thereof. See *Lord-Advocate* v. *Duke of Buccleuch* (25 Sco. L. R. 249), where it was held that Succession Duty was payable on the annual value of shootings, though unlet and yielding no income.

STAMP.

The Commissioners may give credit for stamp in certain cases (55 Geo. 3, c. 184, ss. 45 and 46). The stamps on useless probate, etc., may be cancelled and the value allowed (39 & 40 Geo. 3, c. 72).

STATISTICS.

	Year ended March 31, 1896.	Year ended March 31, 1897.	Year ended March 31, 1898.
I. Stamp Duties.	£	£	£
* Estate Duty (including Settlement Estate Duty) ..	**9,923,029**	**10,232,554**	**11,911,633**
Corporation Duty	39,672	40,189	41,723
Expiring Duties.			
Probate (and Inventory) Duty } ..	180,646	104,890	105,358
Account Duty } ..		22,954	9,470
Temporary Estate Duty ..	162,888	107,507	57,692
II. Differential Duties.			
Legacy Duty	2,730,681	2,546,497	2,595,690
Succession Duty	1,051,512	823,683	727,624
Total	**14,088,428**	**13,878,274**	**15,449,190**

STATUTE-BARRED DEBT.

No executor is compelled to take advantage of the Statute of Limitations against debts otherwise justly due.

An executor may pay a statute-barred debt if he think fit; he is not bound to plead the Statute, and he is not guilty of a devastavit if he does not plead it: but not where charged on land, for here the remedy is not only barred but the right to the debt is extinguished; nor after a decree or judgment, nor where

* The amounts allocated to Local Services for years ended March 31, 1896, 1897, 1898, were £2,358,385, £3,072,973, £4,205,778 respectively. See "Local Taxation Grant."

STATUTE-BARRED DEBT—*continued.*

the testator's estate is insolvent. And see *In re Wenham* (1892), 3 Ch. 59; *Midgley* v. *Midgley* (1893), 3 Ch. 282; as to limitations to this right.

Where testator directs his executor to pay a statute-barred debt this is not a legacy to the creditors (*Williamson* v. *Naylor*, 3 Y. & Coll. 208); otherwise if the debt is legally extinguished (*Turner* v. *Martin*, 26 L. J. R. (Ch.) 216).

STOCKS AND SHARES.

Shares in public companies are generally personal estate; shares in certain companies (New River Company, etc.) have, however, been held to be real estate. See "Real Property."

Shares in railway companies incorporated within the jurisdiction of the Court are liable to Probate Duty (**Attorney-General** *v.* **Higgins, 2 Hurlst. & Norm. 339**). So also are shares in a company incorporated by royal charter with a head office in England, although its business is chiefly carried on abroad (*e.g.* in India), **Fernandes' Case (L. R. 5 Ch. App. 314)**.

Shares in companies are valued for the purposes of duty at the medium price (but see modification of this rule, *infra*) of the day of the date of the grant (Probate Duty) or Account (Legacy, Succession, or Account Duty); and the duty cannot be readjusted in consequence of the subsequent rise or fall in value, provided the correct and proper value is inserted in the first instance (see **Wishart's Executors** *v.* **Lord-Advocate (Galletly's Executors), 18 Sco. L. R. 62**).

Value for Estate Duty.

Where business was actually done in a particular stock on the day before the date of the affidavit leading to the grant the *average* price realized is the price to be adopted. For example, where business was done at 98, $98\frac{1}{16}$, and $98\frac{1}{8}$, the market price is $\frac{98 + 98\frac{1}{16} + 98\frac{1}{8}}{3} = 98\frac{1}{16}$. If no business was done, a price one quarter up from the lower to the higher of the official "closing prices" should be adopted as an estimated price. For example, where the "closing prices" were "98—100," the market price is $98 + \frac{100 - 98}{4} = 98\frac{1}{2}$. Where the day before the date of the affidavit was a Sunday, or other day for which no prices are available, the price for the day before should be taken.

Published quotations or brokers' certificates, or letters from the secretaries of the companies, showing the market price at the date of the affidavit, should be attached.

As to calls on shares not fully paid up, see "Calls."

As to locality of shares, see "Locality."

A testator, the registered owner of shares and debentures in an English company, was domiciled and died in America.

By his will, made according to American law, the shares and debentures passed to his executors. At the request of the executors the company transferred into their names two of the shares and one of the debentures, and paid them the dividends and interest due thereon. The executors, to the knowledge of the company, had not obtained, and did not intend to obtain, probate of the will in England.

Held, that the company had intermeddled with the estate of the deceased so as to constitute itself an executor *de son tort*, and had rendered itself liable to the payment of Probate Duty. Judgment of Wills and Grantham, JJ. (45 W. R.

STOCKS AND SHARES—*continued.*

606) reversed (**Attorney-General** *v.* **New York Breweries Co., Limited, 46 W. R. 143**).

It is held, in practice, that for the purpose of ascertaining the principal value of stocks or shares, the words of s. 7 (5) of the Finance Act, 1894, must be taken as applicable to a sale "in the open market" of a single unit of the whole stock or shares of any particular denomination held by the deceased, such value so ascertained being multiplied by the total number of such units comprised in the holding.

STRAITS SETTLEMENTS.

Date of Order in Council (Finance Act, 1894), May 11, 1895.

Death Duty Act: "The Stamp Ordinance, 1885" (Ord. No. X. of 1885).

SCALE.

Not over	$500	..	Nil.			
„	1,000	..	$1	per	$100 and fractional part thereof.	
„	10,000	..	2	„	100	„ „
Over	10,000	..	5	„	100	„ „

Rate of interest on corrective affidavits 8 per cent.

STRANGER IN BLOOD.

Chargeable to Legacy Duty at the rate of 10 per cent. (55 Geo. 3, c. 184, Sch. Part III.), and to Succession Duty at the rate of 10 per cent. (16 & 17 Vict. c. 51, s. 10) and of 11½ per cent. (51 Vict. c. 8, s. 21).

Exempt from Legacy or Succession Duty or Settlement Estate Duty where "deceased" died after Aug. 1, 1894, and the net estate (real and personal), exclusive of property settled otherwise than by the will, if any, of the "deceased" does not exceed £1000. See "Small Estates."

SUBSCRIPTION. See "Voluntary Subscription."

SUBSTITUTED LEGATEE.

1. A. bequeaths a legacy to B., or, should he predecease A., to C. Here, should B. die in A.'s lifetime, C. will take as substituted legatee, under the will of A.

   And where the gift is to B., or, should he predecease A., to his (B.'s) residuary legatees, or to his next-of-kin should he die intestate, the residuary legatees, or next-of-kin, as the case may be, will take as substituted legatee, under A.'s will.

2. Where, however, the gift is to B., or, should he predecease A., to his executors, administrators, etc., B.'s executors will take substitutively as part of B.'s assets (*Stocks* v. *Dodsley*, 1 Kee. 325; *Leake* v. *Macdowell*, 33 Beav. 238), and for the benefit of B.'s residuary legatees, and not as trustees for B.'s next-of-kin (*Clay* v. *Clay*, 32 W. R. 516. And see *Long* v. *Watkinson*, 17 B. 471).

   This gift, however, will not be liable to further duty (Probate, Inventory, or Legacy Duty) under the will or intestacy of B. (*Lord-Advocate* v. *Bogie* (*Methven's Trustees*), 30 Sco. Law Rep. 454; (1894) A. C. 83; *Attorney-General* v. *Loyd* (1895), 1 Q. B. 496).

   But it is important to note the effect of s. 33 of the Wills Act (1 Vict. c. 26) as to bequests to issue.

   A bequest to a deceased child (or other issue) of the testator, leaving issue to survive the testator, is liable to Stamp Duty (and to Legacy Duty) under the

SUBSTITUTED LEGATEE—*continued.*

child's will or intestacy, as if such child (or other issue) had survived the testator (*Perry's Executors* v. *The Queen*, L. R. 4 Ex. 5).

A gift to the executors of B. (dead) is a gift to B.'s legal personal representatives as part of his estate (*Trethewy* v. *Helyar*, 4 Ch. D. 53).

SUBSTITUTIONAL GIFTS. See "Cumulative Legacies."

SUCCESSION DUTY.

The Succession Duty Act (**16 & 17 Vict. c. 51**) (*a*) practically supplemented the Legacy Duty Acts, and made liable to duty all property, not subject to Legacy Duty under the Legacy Duty Acts, whether real or personal, which is disposed of, or devolves by operation of law, so as to pass to the objects of the gift, or to the heir or kindred of the deceased owner, upon the death of any person dying after May 19, 1853.

The term "**real property**" including, for the purposes of Succession Duty, all freehold, copyhold, customary, leasehold, and other hereditaments and heritable property, whether corporeal or incorporeal, in Great Britain and Ireland, except money secured on heritable property in Scotland, and all estates in any such hereditaments (s. 1 of 16 & 17 Vict. c. 51).

The term "**personal property,**" not including leaseholds, but including money payable under any engagement, and money secured on heritable property in Scotland, and all other property not comprised in the preceding definition of "real property" (s. 1).

Cases in which "personal property" is subject to Succession Duty. See "Personal Property."

Its **amount** depends upon the **value** (*b*) of the succession, and upon the **degree of consanguinity** existing between the successor and the predecessor, and is payable in money, in the case of personal property upon receipt or retainer by or for the use of the successor, and in the case of "real property" by instalments, the first becoming due twelve months after the successor has become entitled in possession.

Its **incidence** depends—

(i.) As to successions to **moveable** property, upon the **domicile** (*q.v.*) of the owner, or the situation of the property according to circumstances.

(ii.) As to successions to **immoveable** property, upon the **local situation** thereof.

No Succession Duty is payable in respect of property whose aggregate principal value is under £100 when derived on any death from the same predecessor (s. 18 of 16 & 17 Vict. c. 51).

See also ss. 36 and 41 of 44 Vict. c. 12.

The Succession Duties now in force were imposed by 16 & 17 Vict. c. 5; 51 Vict. c. 8, s. 21; Finance Act, 1894, s. 18.

The Forms in use are Nos. 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 19; 6–1, 7–1 (Finance Act, 1894).

(*a*) Leaseholds were, by this Act, taken out of the scope of the Legacy Duty Acts and made liable to Succession Duty as "real property."

(*b*) Which "value," with certain exceptions, is, as regards successions to "real property," the capitalized value of an annuity [equal to the net annual value of such property] for the life of the successor. See Tables annexed to the 16 & 17 Vict. c. 51 (The Succession Duty Act). But see s. 18 of Finance Act, 1894, where deceased died after Aug. 1, 1894, and the successor is "competent to dispose" (*q.v.*) when the duty is payable upon the principal value.

SUCCESSION DUTY—*continued.*

TYPICAL EXAMPLES OF "SUCCESSIONS" (16 & 17 Vict. c. 51).

Disposition of Property by Will.

"Real Property."

I. Devise to A. in Fee Simple (*a*).

All the instalments of Succession Duty are payable, although A. may die before any or all of such instalments may become due (s. 21).

Where A. is a CHILD or other issue, then, if A. predeceases, leaving issue to survive the testator, there is no lapse. See "Lapse."

Where A. is a daughter, her husband, who takes as tenant by the curtesy, is chargeable to the same rate of duty (1 per cent. or 1½ per cent.) as A. would have been had she survived, but on the value of his own life.

This rule of practice is based on the doctrine of *Eager* v. *Furnival* (17 Ch. D. 115). See "Curtesy."

Where, however, in the above case A. is a son, and devises or settles the real property so devised to him, or dies intestate, a NEW succession arises, derived from A. as predecessor under such will, settlement, or intestacy.

Where A. represents a CORPORATION, the duty is payable upon the PRINCIPAL value, but by the usual instalments (s. 27); but duty on successions subject to trusts for CHARITABLE or public purposes is payable on the principal value at once, and not by instalments (s. 16).

II. Devise in Tail (*a*).

Devise to A. (eldest son) for life.

Remainder to his first and other sons successively in tail male.

Remainder in default to testator's second son (C.) for life.

Remainder to his first and other sons successively in tail male.

Remainder in default to testator's right heirs for ever.

Should the tenant-in-tail, either when entitled in expectancy, or when entitled in possession, bar the entail, he will thus become possessed "of a continuing interest" in the property of which he is "competent to dispose by will" (s. 21; *Lord Lilford* v. *Attorney-General*, L. R. 2 H. L. 63). Consequently all the instalments of duty will be payable in respect of his (the tenant-in-tail's) succession.

Where the tenant-for-life (A.) and the tenant-in-tail (B.) bar and resettle to use of A. for life,

Remainder to B. for life,

Remainder to B.'s issue in tail male; for the purposes of the Succession Duty Act, B. takes his succession under the will and not under the resettlement, and is liable to duty at the same rate as would have been payable if no such resettlement had been made (*Attorney-General* v. *Lord Braybrooke*, 29 L. J. R. (Exch.) 283; 36 L. T. 383; 5 Hurl. & N. 488; *Lord Braybrooke* v. *Attorney-General*, 9 H. L. C. 150).

Note that if an estate tail is devised to X., who predeceases the testator leaving issue to survive the testator, there is no lapse, the devise taking effect as if X.'s death had happened immediately after that of the testator, unless a contrary intention appears by the will: s. 32 of 1 Vict. c. 26 (The Wills Act).

(*a*) Where the deceased dies after Aug. 1, 1894, and the successor is "competent to dispose" (*q.v.*), Succession Duty is payable upon the principal value (Finance Act, 1894, s. 18), Form 6-1.

SUCCESSION DUTY—*continued.*

III. Devise for Life or other Limited Period. (Net annual value £100.)

Only the instalments of duty which actually become due are payable, and payment of the whole duty in advance subject to discount (s. 40) does not prejudice the right to repayment of overpaid duty.

1. Devise to A. (aged 40) for life. Value (Table I.) is £1487 10*s.* (*a*).
2. Devise to A. for life or till remarriage. Value £1487 10*s.* In this case the assessment is made on the life without regard to the contingency of marriage (s. 36), but should the contingency happen a proportionate part of the overpaid duty will be returned.

   For example, suppose A. should marry in five years, as from the death of testator, the correct value, on which to pay duty, would be £445 3*s.* 6*d.* (Table III., five years certain) and the excess of the duty already paid on the value, £1487 10*s.*, over the correct duty is the sum to be returned.
3. Devise to A. for life and on his death as he (by will, or by deed or will) shall appoint (*b*).

   Here all the instalments of duty are payable (as in the case of a devise in fee simple), although A. may die before any or all of such instalments become payable, and although the power be not exercised (s. 21).
4. Devise to A. for life, remainder to B. (brother) in fee simple.

   (i.) B. predeceases A.; devises or settles his reversionary interest, or dies intestate.

   A new succession (s. 2) arises. This succession opens by the death of A. and is derived from B. (under his will, settlement or intestacy) as predecessor.

   (ii.) B. alienates his reversionary interest to C. (stranger in blood). This is a transferred succession (s. 15), which opens by the death of A., and is derived from the testator as predecessor, C. paying duty on the value of his own life (*a*), but at B.'s rate (3 per cent. or 4½ per cent.). See "Reversionary Interests, Alienation of."
5. Devise to B. (aged 15), until he attains 21 (*b*).

   The value of £100 per annum for six years certain (Table III.) is £524 4*s.*

   The nearest value for an annuity of £100 (Table I.) is £511 9*s.* 6*d.*

   The age corresponding to this value is 76.

   The value of B.'s interest is the value of an annuity for £100 for joint lives of 15 and 76, viz. £490 12*s.* 6*d.*
6. Devise to C. (aged 48) until D. (aged 6) attains 21 (*b*).

   Value £1111 16*s.* 6*d.* (Table III., 15 years certain).
7. Devise to C. (aged 48) until D. (aged 6) attains 21, should C. so long live.

   The nearest value for an annuity of £100 (Table I.), to £1111 16*s.* 6*d.*, the value for 15 years certain (Table III.), is £1103 18*s.* Age 55. The value of C.'s interest is the value of an annuity for £100 for joint lives of 48 and 55 (Table II.), viz. £894 15*s.* 6*d.*
8. Devise to E. (aged 40), during the life of F. (aged 28).

   E. has an estate *pur autre vie*, and duty is assessed on £1667 1*s.*, the value for F.'s life; where, however, the limitation is during the life of F. should

(*a*) The Tables (I., II., III.) referred to are those annexed to the Succession Duty Act (16 & 17 Vict. c. 51).

(*b*) Where the deceased dies after Aug. 1, 1894, and the successor is "**competent to dispose**" (*q.v.*), Succession Duty is payable upon the **principal value** (Finance Act, 1894, s. 18), Form 6–1.

SUCCESSION DUTY—*continued.*

E. so long live, the duty is assessed on the value (£1257 19*s.* 6*d.*) for the joint lives of E. and F. (Table II.).

9. Devise to G. during the lives of H. and I. and the survivor of them should G. so long live.

Find the value of an annuity (*q.v.*) of £100 for the longer of the two lives (H. and I.); then find the age whose value for an annuity of £100 corresponds the nearest to this value. Then find the value for the joint continuance of this age and the life of G. (Table II.).

10. Devise to A. and B. during their joint lives, and on the death of either—
(1) To the survivor for life.
(2) To C.

In Case (1), where A. and B. are not husband and wife, duty is assessed on a MOIETY of the real estate as passing to A. for life, and on a moiety as passing to B. for life (two sets of No. 6 Forms in duplicate), and on the death of either, on the moiety accruing to the survivor; or duty can be assessed on the WHOLE (one set of Forms No. 6 in duplicate) for the average age of A. and B., or again (and this has been the rule (*a*) where A. and B. are husband and wife), on the longer of the two lives, A. and B. (*b*).

In Case (2), the duty is assessed on the joint lives of A. and B., and, on the death of either, on the life of C., as a new succession derived from the original testator.

11. Devise to A., B., and C. during their joint lives, and on the death of either to the survivors or survivor, and on the death of the survivor to E.

As in preceding example, the assessment being made on THIRDS (instead of moieties), as passing to A., B., and C.; or on the WHOLE for the average age of A., B., and C., and on the death of A., B., or C., on the ONE-THIRD accruing to the survivors or survivor; or again on the longest of the three lives (*c*).

As to the case where A. and B. are husband and wife, then it would appear to depend upon the construction of the will whether A. and B. take a MOIETY (C. taking the other moiety), or equal THIRDS with C.

In *Jupp* v. *Buckwell* (57 L. J. Ch. 774), it was held that the rule that under a gift by will to a husband and wife and a third person, the husband and wife take only one moiety between them, the third person taking the other moiety, is not affected by the Married Women's Property Act, 1882.

However, any indication, however slight, of testator's intention that each beneficiary is to take separately has been held to defeat the application

(*a*) The Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), has, in effect, abolished tenancy by entireties, as regards estates to which that Act applies.

A limitation to husband and wife will, under the Act, make them joint tenants, or tenants in common, according to the terms of the limitation.

In re Marsh, Mander v. *Harris*, 27 Ch. D. 166; 32 W. R. 941.

(*b*) Add together the values for each of the single lives, A. and B., and subtract from this sum the value for the joint continuance of the two lives.

Formula: A + B − AB.

(*c*) Find value for the joint continuance of the two elder lives (A., B.).

Find the age of a single life (D.) of the same (or nearest) value to the value thus obtained.

Find the value for the joint continuance of the two lives, C., D., and from the amount deduct £5.

Formula: CD − £5.

SUCCESSION DUTY—*continued.*

of the above rule (see *Byram* v. *Tull.*, 42 L. R. Ch. 306, which followed *Warrington* v. *Warrington*, 2 Hare, 54).

12. Devise to Q. at 21, with (1) direction or (2) power to apply rents for his benefit meantime.

In (1) duty is payable at once on Forms No. 6, or 6–1 (in duplicate); in (2) on Form No. 1 (in duplicate, signed and dated) on the rents applied from time to time (s. 32, *cf.* ss. 11 and 12 of 36 Geo. 3, c. 52).

13. Devise to the wife for life, she maintaining out of the property, so devised to her, testator's children until the youngest attains 21. Form No. 1, as in preceding Example. See "Maintenance."

14. Devise to R. for life, and on his death among the children of T., as he shall appoint (s. 4).

The children of T. take their succession as derived from the original testator (and not from R.). See "Powers of Appointment."

15. Devise of a perpetual legal rent-charge to U. (created in testator's favour by a prior instrument) for life.

Duty is payable on the value of the successor's life-interest by the usual instalments as in the case of a succession to real property.

Where the real property consists of:—

1. **Money-Land.**—Here the "annual value" is the annual produce of the fund if invested, or 4 per cent. thereon if uninvested. See "Conversion."
2. **Copyholds.**—Are "real property" (s. 1), within the meaning of 16 & 17 Vict. c. 51. Allowances are made to successors in respect of fines incident to the tenure (s. 28), but not until they have been actually paid, for fines do not carry interest, and might not be paid during the whole course of the successor's life. The sum to deduct in the Form No. 6 is the annuity which for the life of the successor, or the duration of his interest, would be equal in value to the fine. But see "Copyholds."
3. **Copyholds (or Leases) for lives.**—Where A. (aged 40), succeeds to leasehold (or copyhold) property held for a life (aged 30), the duty is assessed on the value for the joint continuance of the two lives (40 and 30), unless compounded under the provisions of s. 39.
4. **Manors, Mines.**—Being "real property" producing a fluctuating income, the duty thereon is assessed on the average income to be agreed upon between the commissioners and the successor, and in default of such agreement the principal value is to be ascertained and the annual value taken at 3 per cent. thereon (s. 26).†
5. **Leaseholds.**—Where the full saleable value is less than the value of the successor's life-interest, it is usual to compound the claim under the provisions of s. 39 by taking the duty on such saleable value.† Where, however, the successor takes for life, such composition only covers the life-interest, and further duty may be payable on the death of the life-tenant by the successor taking in remainder.
6. **Timber.**—Use Form No. 10 (in duplicate). See "Timber."
7. **Advowsons.**—Use Form No. 4 (in duplicate). See "Advowson."

"Personal Property."

Note that s. 32 of the Succession Duty Act, 1853, incorporates the provisions of ss. 8, 10, 11, 12, 14, and 23 of the Legacy Duty Act (36 Geo. 3, c. 52). See "Legacy Duty."

† But where death after Aug. 1, 1894, see p. 452, footnote (*b*).

SUCCESSION DUTY—*continued.*

Disposition of Property by Deed.

1. **Marriage Settlement.**

(*a*) **Setttlement of land not intended to be strictly settled:—**

Here the usual course is to convey the land to the trustees upon trust to sell and then to hold the proceeds upon the trusts of the settlement.

The land is thus impressed with the character of personalty, and the ordinary clauses and provisions of a settlement of personalty are applicable. See example (*b*).

(*b*) **Settlement of Personalty.**

The usual trusts are:—

To hold upon trust for settlor until the intended marriage.

After the marriage upon trust to retain in its existing state, or to SELL the same and invest the proceeds, with power to vary the investments, etc.

To stand possessed thereof upon trust for the husband or wife for life.

After the death of either the husband or wife, to the survivor for life, and upon the death of the survivor for such child or children or remoter issue of the intended marriage at such age or time, etc., as the husband and wife shall by deed jointly appoint, and in default of appointment as the survivor shall by deed or will appoint, and in default of such appointment, then in trust for all the children of the intended marriage, who being sons shall attain the age of twenty-one years, or being daughters shall attain twenty-one or marry under that age in equal shares; and if only one child, then in trust as to the whole fund for that one child.

Hotchpot, advancement, etc., clauses.

Trusts in the event of no issue.

Where the husband or the wife is the settlor, or where both settle, no Succession Duty is payable, in respect of the personalty so settled, until the death of the survivor.

Where, however, the father or mother or other relation of the husband or wife settles, duty is payable on the death of the first life-tenant, and generally on the corpus of the fund (s. 32; and see s. 12 of 36 Geo. 3, c. 52).

(*c*) **Strict Settlement of Realty.**

Settlement by A. (intended husband) on his marriage with B. (intended wife).

LIMITATIONS—

To the trustees to the use of the husband and his heirs till the marriage.

Pin-money term (ninety-nine years), or rent-charge in favour of the wife (B.) during the joint lives of herself and husband.

To use of husband (A.) for life (*ob.* May 1, 1880). Claim for Succession Duty arises on his death.

Where the life estate is given "without impeachment of waste" he may, irrespective of the Settled Land Act, 1882, cut down timber (except ornamental timber: *Baker* v. *Sebright*, 13 Ch. D. 179) and convert it to his own use. As to his power to cut timber when impeachable for waste, see s. 35 of the Settled Land Act, 1882. He may work open mines, but if impeachable for waste he may not open new ones. See s. 17 of Settled

SUCCESSION DUTY—*continued.*

Land Act, 1882, as to his power to make mining leases. As to other powers *quâ* tenant for life, see "Settled Land Act."

Jointure Term (200 years) in favour of wife B.

B. dies June 3, 1891. Claim for Succession Duty arises upon her death, in respect of the cessor of the jointure.

Portions Term (1000 years), in favour of the younger children of the marriage.

The term preceding the estate tail limited to the eldest son, is not extinguished by disentailment. Succession Duty is payable in respect of sums appointed. See "Portions;" "Merger;" "Younger Sons."

To the use of the sons of the marriage successively in tail male. On the marriage of the eldest son of the tenant-for-life the estate is usually disentailed and resettled to such uses as father and son shall jointly appoint. See "Resettlement."

To the use of the daughters of the marriage as tenants-in-common in tail with cross remainders among them.

The effect of this limitation is that on the death of any daughter, and the failure of issue of her body, both the original share and any share which she or her issue may have taken will be divided equally among the other daughters in tail.

To the use of intended husband (A.) his heirs and assigns for ever.

Declaration of trusts respectively of pin-money, jointure, and portions terms.

Powers to the tenant-for-life to jointure a future wife, charge portions for the children of a future marriage, etc.

Trustees' clauses.

Settlor's covenants for title.

2. Realty settled to use of A. (*ob.* 1889) for life, remainder to B. for life (*ob.* 1890), remainder as B. shall appoint (*a*).

All the instalments of duty are payable by B. (where liable, as he is "competent to dispose by will of a continuing interest in" such realty (s. 21)).

3. Personalty settled to use of C. (*ob.* 1887) for life, remainder to D. for life (*ob.* 1889); remainder as D. shall appoint (appoints by will); gift over in default.

Succession Duty is first payable on the value of D.'s life-interest, then on the whole fund, when appointed, allowance being made for duty already paid (ss. 21 and 23).

Where in the above case the gift over in default of appointment is to E., who is chargeable to the same rate of duty as D., duty is payable at once on C.'s death on the corpus of the fund (s. 32); and see s. 12 of 36 Geo. 3, c. 52.

4. Personalty settled to the use of F. (*ob.* 1889) for life;
Remainder to the use of G. (*ob.* 1891) for life;
Remainder to H. absolutely.

(*a*) Where G. and H. are chargeable to the same rate of duty, duty is payable on the death of F., on the *corpus* of the fund (s. 32).

Where chargeable to different rates of duty, duty (but only the instalments thereof which actually become due) is payable on the value of G.'s succession on the death of F.; further duty being payable by H. on his succession to the corpus of the fund on the death of G.

(*a*) See "Competent to Dispose."

SUCCESSION DUTY—*continued.*

(*b*) Where F., G., and H. are respectively husband, wife, and child, then where H. predeceases the surviving tenant-for-life and pays Stamp Duty on the value of his reversionary interest in the fund, the Stamp Duty so paid covers the Succession Duty which might otherwise be payable on the death of the surviving life-tenant (s. 41 of 44 Vict. c. 12; *In re Haygarth's Trusts*, 22 Ch. D. 545).

(*c*) Where H. sells his reversionary interest to X., then X. pays duty on death of G. and at H.'s rate (s. 15).

(*d*) Where H. settles his reversionary interest on himself for life, remainder to X., and H. predeceases the tenant-for-life, G., then **only one duty** is payable on G.'s death, but at the higher rate chargeable under the two dispositions: duty being first paid on H.'s succession under the old disposition, and the balance, if any, being assessed on X. under the new dispositions.

Where, however, the fund was not originally settled, but bequeathed, and G. and H. were liable to the same rate of duty, Legacy Duty being paid on the corpus (s. 12 of 36 Geo. 3, c. 52), Succession Duty will be payable by X. on the death of G., as derived from H. as predecessor.

(*e*) Where H., having predeceased the surviving tenant-for-life, bequeaths his reversionary interest to X., who in turn predeceases G., then Succession Duty is payable by H. on the death of G., and, where the Legacy Duty payable under H.'s will and under the will or intestacy of X., in the aggregate exceeds the Succession Duty, Legacy Duty is also payable in respect of such excess (*Attorney-General* v. *Littledale*, L. R. 5 Ex. 275; 5 Eng. & Ir. H. L. 290).

5. Realty, disposition, or devolution of reversionary interests in. See "Reversionary Interest."

6. Where successor is also predecessor—

(*a*) Resulting trust to settlor, and failure of prior limitations (no duty payable, s. 12).

(*b*) By reason of a resettlement of property previously disentailed. For example, A. (tenant-for-life) and B. (tenant-in-tail) disentail and resettle to such uses as they shall jointly appoint.

They appoint thus:—

Annuity of £1000 to B. during the joint lives of A. and B.
And subject thereto to A. for life,
Remainder to B. for life,
Remainders over.

B. on A.'s death succeeds as tenant-for-life under the resettlement, taking his succession "under a disposition made by himself," but the original instrument creating the entail is to be referred to in order to ascertain the rate of duty with which he is chargeable. See "Predecessor."

7. Voluntary settlement of

(*a*) Realty, see Examples, pp. 451–457, *ante*.

(*b*) Personalty, where limited by way of annuity. See "Annuity."

See also "Voluntary Settlement."

8. Miscellaneous Examples. See "Joint Tenancy;" "Cesser;" "Devolution;" "Leaseholds" (falling in of lease); "Option;" "Covenant."

As to deduction as against Succession Duty, see "Deductions."

SUCCESSION DUTY—*continued.*

As to payment, (*a*) when, (*b*) by whom, (*c*) on what amount—of Succession Duty, see "Payment."

As to return, etc., of Succession Duty, see "Rectification of Duty."

As to differential scale, see "Rates of Duty."

As to exemptions from Succession Duty, see "Exemptions."

9. **Cases on the Succession Duty.**

See "Disposition;" "Domicile;" "Predecessor;" "Powers of Appointment;" "Acceleration;" "Reversionary Interests, Alienation of;" "New Succession;" "Cesser;" "Annual Value;" "Reservation of Interest;" "Cumulative Duties;" "Sale;" "Policy Moneys;" "Covenant;" "Payment;" "Deductions;" "Relinquished Property;" "Advowson;" "Devolution."

SUITS. See "Administration Suit."

SUPERSTITIOUS USES.

Gifts for superstitious uses—for example, for saying masses for the dead—are (except in Ireland, unless tending to a perpetuity) absolutely void, and the property is undisposed of. See "Masses;" "Charities, Gifts to."

SURETIES.

In cases of intestacy the Court requires the administrator to find two sureties for the due administration of the estate. The penalty to be inserted in the bond is twice the amount under which the estate is sworn; but see "Land Transfer Act, 1897."

SURRENDER OF LIFE INTEREST. See "Acceleration;" "Beech Case."

SURVIVORSHIP.

Liability of property passing by, to Legacy Duty (36 Geo. 3, c. 52, s. 16), Succession Duty (16 & 17 Vict. c. 51, s. 3), Account Stamp Duty (44 Vict. c. 12. s. 38), and Estate Duty (Finance Act, 1894, ss. 1, 2 (1 *c*)).

T.

TASMANIA.

Order to Council (Finance Act, 1894), not yet applied.

Death Duty Act: "Probate Duties Act" (32 Vict. No. 1).

	Scale.
Estate (net) under £100	Nil.
„ 500	2 per cent.
Over 500	3 „

TEMPORARY ESTATE DUTY.

This tax was imposed by 52 Vict. c. 7 (*a*), and is imposed in respect of:—

1. Property included in **affidavits** (and inventories) leading to grants of probate

(*a*) For full text of the Act, see Appendix.

TEMPORARY ESTATE DUTY—*continued.*

and letters of administration where the value of the estate and effects exceeds £10,000, and the application for the grant is made on or after June 1, 1889 (s. 5, sub-s. 1). The duty is to be accounted for on a separate statement, Form E (*in duplicate*), and to be denoted by IMPRESSED stamps. A certificate that such statement has been delivered is endorsed on the grant.

Where a further affidavit is necessary (s. 32 of 44 Vict. c. 12), and additional Stamp Duty is payable either by reason of additional assets falling in, or by reason of an error in the original estimate of value of the estate and effects included in the former affidavit, then ESTATE DUTY is payable on such additional assets or increased value, either where the value of the estate and effects in the former affidavit exceeded £10,000, or where it did not exceed £10,000, but such value together with the value of the estate and effects included in the further affidavit, or the increased value as the case may be, exceeds £10,000 (Form G).

No Estate Duty, however, is payable in such a case where the grant was taken out before June 1, 1889 (s. 5, sub-ss. 3 and 7).

2. Property included in **accounts** delivered according to s. 38 of 44 Vict. c. 12, on and after June 1, 1889, where the estate and effects included therein exceed £10,000. The duty is to be accounted for on Form F (*in duplicate*), and to be denoted by impressed stamps (s. 5, sub-s. 2).

3. **Successions** (s. 6).

(1) Where the value of any **succession** upon the death of any person dying on or after June 1, 1889, chargeable with duty under the Succession Duty Act, 1853, and the 51 Vict. c. 8, exceeds £10,000. Form 13 (*in duplicate*).

(2) Where the value of any **succession to real property** under the will or intestacy of any person so dying chargeable with duty under the said Act does not exceed £10,000, but such value, together with the value of any other benefit taken by the successor under such will or intestacy exceeds £10,000, Form 13 (*in duplicate*).

Estate Duty is payable in a case where a successor takes an interest under a will and real property under intestacy (there being no devise thereof in the will) or *vice versâ*, and the combined values exceed £10,000. In other words, benefits under the will and intestacy of the same person can be added together, though benefits under will and deed or intestacy and deed cannot, the word "intestacy" in s. 6 meaning complete or partial intestacy.

THE VALUE upon which the Estate Duty in respect of a succession to REAL PROPERTY is to be charged and assessed shall be ascertained in accordance with the Succession Duty Act, 1853, subject to the following provisions:—

1. In the case of a successor who is entitled to the REAL PROPERTY comprised in his succession for an estate in fee simple, or in fee according to the custom of any manor, or for lives renewable under any custom or under any lease for lives, or for any estate tail, or under any entail under which he can acquire the property in fee simple without consent of any person, or is entitled to any such property for life, and competent to dispose as he shall think fit (*c*) of a continuing interest therein, the VALUE shall be the PRINCIPAL VALUE of such property, based upon the annual value estimated, after making such allowances (if any) as ought to be made under the said Act.

TEMPORARY ESTATE DUTY—*continued.*

It would therefore appear that, where leaseholds for years are comprised in the succession, the value to be taken is not the principal value, but the value of the successor's life interest (s. 21 of 16 & 17 Vict. c. 51).

(c) These provisions would include a devise to A. and B., as joint tenants with power to sever, but not a devise to C. for life, and on his death to such persons as he shall *by will* appoint, cf. s. 21 of 16 & 17 Vict. c. 51.

The duty payable in respect of such principal value shall not in any case exceed the amount which would be chargeable upon an annuity equal to such annual value according to the highest value in Table III. in the schedule of the Succession Duty Act, 1853 (s. 6, sub-s. 5a).

2. In the case of an INCREASE OF BENEFIT accruing to a successor, and chargeable to Succession Duty by reference to ss. 5, 20, or 25 of the Succession Duty Act, 1853, where the value of the succession, apart from the increase of benefit, shall exceed £10,000, such increase of benefit shall be chargeable with ESTATE DUTY, whatever may be the value thereof, and where the value of the succession, apart from the increase of benefit, shall not exceed £10,000, the value of such increase of benefit as well as of every preceding increase of benefit shall be added to the value of the succession for the purpose of the said duty (s. 6, sub-s. 5b).

Exemptions (s. 6, sub-s. 3).

The Estate Duty imposed on successions (s. 6) is not payable upon the value of successions to leaseholds passing by will or devolution by law, or to property included in an account delivered according to s. 38 of 44 Vict. c. 12, in respect of which duty has been paid on a statement delivered (in accordance with the provisions of s. 5) with the affidavit leading to probate or letters of administration or with the account.

The Rate of Duty.

One pound for every full sum of £100 and for any fraction of £100 over any multiple of £100 (s. 6, sub-s. 2).

The Estate Duty on successions is to be assessed and paid in like manner as Succession Duty (s. 6, sub-s. 4), that is **at once** in the case of a succession to personalty (not payable by way of annuity), and **by instalments** in the case of a succession to REAL PROPERTY (half-yearly or yearly instalments; s. 21 of 16 & 17 Vict. c. 51; s. 22 of 51 Vict. c. 8), and, in the case of a succession to personalty, by way of annuity (four equal yearly instalments; s. 32 of 16 & 17 Vict. c. 51).

The Estate Duty on SUCCESSIONS is to be subject to the enactments relating to Succession Duty, and in the case of a succession to REAL PROPERTY is to be a first charge thereon, or on the interest of the successor therein, according as the duty is or is not chargeable on the principal value of such property (s. 6, sub-ss. 4, 6).

Penalty.

The penalty of double the amount of duty chargeable is imposed for not delivering a statement as required by the Act (s. 8, sub-s. 1).

Duration of Charge.

The Estate Duty "shall not be payable in respect of the value of the estate and effects of any person **dying on or after June 1, 1896**, or of the value of any personal or moveable property included in an account by relation to the death

TEMPORARY ESTATE DUTY—*continued.*

of any person so dying, or in respect of the value of any succession upon the death of any person so dying, and statements of such values shall not be required" (s. 7).

It is, however, not payable where the new Estate Duty is leviable (Finance Act, 1894, s. 1).

Note that "Estate Duty" under this title means "Temporary Estate Duty."

FORMS IN USE.

E (*in duplicate*). Statement to be delivered with the affidavit leading to probate or letters of administration.

F (*in duplicate*). Statement to be delivered with an account under s. 38 of 44 Vict. c. 12.

G (*in duplicate*). Corrective statement for rectifying the amount of Estate Duty in cases where too much or too little has been paid in the first instance.

S. 31 of 44 Vict. c. 12, which provides as to the return of overpaid Stamp Duty to apply to the return of overpaid Estate Duty (s. 5, sub-s. 6).

No. 13 (*in duplicate*). Statement to be delivered with the succession account.

No. 14, for the second and subsequent instalments of Estate Duty on successions.

TENANCY BY ENTIRETIES.

In the case of a limitation to the use of two persons who afterwards intermarry, the husband and wife continue to be joint tenants, notwithstanding the marriage, and the husband may sever the joint tenancy by alienating his own interest. But a limitation to two persons who are husband and wife at the time of the limitation makes them, not joint tenants, but tenants "by entireties." Both are seized of the entirety, and both must consent to alienate. With regard to cases coming within the Married Women's Property Act, 1882, the husband will no longer have an estate by entireties, in any real or personal estate which has been conveyed, devised, or bequeathed to him and his wife during the marriage (*Ward* v. *Ward*, 14 Ch. D. 506; but in such a case, the husband and wife will hold either as joint tenants or as tenants in common according to the terms of the limitation, and will be entitled each of them to one undivided moiety, with or without (as the case may be) the right of survivorship (*Jupp* v. *Buckwell*, 39 Ch. D. 148; and distinguish *Mander* v. *Harris*, 24 Ch. D. 222; 27 Ch. D. 166). See Bright, "H. & W.," vol. i. pp. 25–28; Griffiths' "Married Women's Property Acts," 6th ed. p. 5.

It was a consequence of the doctrine that husband and wife are, for most purposes, one person, that if an estate was conveyed to a husband and wife and a third party as joint tenants, the husband and wife together took a moiety only, instead of one-third each, and the third party took the other moiety, in the same way as if the grant had been to two persons only. See *Re Dixon, Byram* v. *Tull*, 42 Ch. D. 306 (the case of a will where the testator died before the Married Women's Property Act, 1882, came into operation).

It appears to be the result of recent decisions that in cases falling within the said Act husband and wife still take only one aliquot share as against the other joint tenants, on the ground that the Act does not affect the doctrine that husband and wife are one person (*per* Cotton, L.J.: "In my opinion the Act was not intended to alter any rights excepting those of the wife and husband *inter se*," (*Mander* v. *Harris, supra*)). However, any indication, however slight, of

TENANCY BY ENTIRETIES—*continued.*

testator's intention that husband and wife shall take separately has been held to defeat the application of this doctrine (see *Byram* v. *Tull*, *supra*).

TENANT BY THE CURTESY. See "Curtesy."

TENANT-FOR-LIFE.

Of personalty, see "Annuity."

Of realty: only liable for instalments of Succession Duty which actually become due (s. 21 of 16 & 17 Vict. c. 51); unless the gift is to him for life, and on his death as he shall by will, or by deed or will appoint, when (whether he exercise the power or not) he is competent to dispose by will of a continuing interest in the property, and any instalments of duty unpaid at his death will be a continuing charge on such interest, in exoneration of his other property, and payable by the owner for the time being of such interest.

When predecessor under a resettlement. See "Predecessor."

Powers of, under Settled Land Act, 1882. See "Settled Land Act."

Where joins with remainderman in selling settled real estate, the claim for Succession Duty on the remainderman's expectant succession is not shifted to the proceeds though settled on similar trusts to which the property sold had been subject, nor to property purchased therewith, but follows the property sold. See "Reversionary Interests, Alienation of."

Release of life interest. See "Acceleration;" "Beech Case."

Entitled to have reversionary property converted, though the reversion is dependent upon his own life interest (*Wilkinson* v. *Duncan*, 23 Beav. 469).

TENANT-IN-TAIL.

When "competent to dispose by will of a continuing interest" in real property (*Lilford* v. *Attorney-General*, L. R. 2 Eng. & Ir. H. L. App. 63), see "Competent to Dispose."

TENANT-RIGHT.

In England (*a*) a custom ensuring to an out-going tenant compensation from his landlord for not being able to reap the full benefit of labour or improvement expended or made during the tenancy; or, (*b*) the money due in pursuance of the custom.

In Ireland, a custom either ensuring a permanence of tenure in the same occupant without liability to any other increase of rent than may be sanctioned by the general sentiments of the community; or entitling a tenant of a farm to receive purchase-money amounting to so many years' rent, on its being transferred to another tenant. Tenant-right is liable to Probate and Estate Duty (Rawson's "Law Lexicon").

TESTAMENTARY EXPENSES.

A deduction against Legacy Duty (but not against Probate Duty).

Apportionment of, where charged on a mixed Fund. See "Mixed Funds."

Includes "cost of administration" (*Webb* v. *De Beauvoisin*, 31 B. 573, where the trust was for "payment of debts, testamentary and other expenses, and legacies under the will"; *Coventry* v. *Coventry*, 2 Dr. & Sm. 470, where the trust was "to pay funeral and testamentary and legal expenses."

TIMBER.

Timber, trees, or wood, not being coppice or underwood, comprised in any succession is chargeable to Succession Duty (s. 23 of 16 & 17 Vict. c. 51) where the NET moneys, *i.e.* after deducting necessary outgoings, received from the sale thereof in any one year shall EXCEED the sum of £10. (Form No. 10.)

This provision (s. 23) does not apply where the Succession Duty is payable in the first instance upon the principal value of the property under the Finance Act, 1894, s. 18 (1).

The "necessary outgoings" are those which are intrinsically necessary and do not include any expenses incurred by the successor for his mere convenience or for purposes of ornamentation; they include the expenses of selling, felling, and drawing out the timber, of restoring the fences, ditches, roads, and gates, injured by the felling and drawing out of such timber, in so far as these expenses are borne by the vendor; also the expenses of the year in which the sale takes place in connection with the growth of the timber actually sold.

The duty does not attach—

1. To growing trees sold with the property.
2. To timber used for repairs, but if the timber be sold and the proceeds be expended in the purchase of other timber or in improving the property, the duty attaches.
3. To the sale moneys of timber from trees which were not growing upon the property at the time when the successor became beneficially entitled to the property in possession.

But where the bark is stripped from the trees and sold, the sale moneys will be chargeable with duty.

Coppice and other wood capable of yielding a yearly profit should be included in the general account of the succession.

Where the successor desires to commute the duty presumptively payable in respect of future sales he should apply in writing to the Controller, and forward an estimate by a competent person showing the amounts which, in a prudent course of management of the property, are likely to be obtained during the successor's life.

TIME WHEN DUTY IS PAYABLE. See "Payment."

TITHES AND TITHE RENT-CHARGE.

1. Only allowed as a deduction in succession accounts as against property actually let, and then only when payable by the successor.
2. Tithes are a species of incorporeal hereditaments, being one-tenth part of the increase yearly arising and renewing from the profits of lands (prædial tithes), the stock upon lands (mixed tithes), and the personal industry of the inhabitants (personal tithes).

Tithes are now commuted into a rent-charge, the amount of which is annually adjusted according to the price of corn (Tithe Commutation Acts, 31 & 32 Vict. c. 89; 36 & 37 Vict. c. 42, etc.). The amount is ascertained by the Government average of corn, etc., as published in the *London Gazette* for the last seven years. This rent-charge merges the same as an ordinary rent-charge.

A person entitled to tithe rent-charge in fee simple, or fee tail, in possession, or who is tenant-for-life of tithe rent-charge and of land subject thereto (both being settled to the same uses), may by deed or declaration under his hand and seal, with the approval of the Board of Agriculture, cause the rent-charge to merge in the land.

TITHES AND TITHE RENT-CHARGE—*continued.*

Tithe rent-charge may be redeemed in certain cases.

By the Tithe Act, 1891, the charge is made payable by the landlord notwithstanding any contract to the contrary where the tenant occupies the land under a lease and the tithe rent-charge has first become payable since the Act.

3. How to be valued for Succession Duty (s. 22 of 16 & 17 Vict. c. 51).

TOLLS.

Tolls of a lighthouse are held to be real estate, and not liable to Probate or Legacy Duty (*Attorney-General* v. *Jones*, 1 M. C. N. & Gor. 574).

TOMB.

1. As to deduction as a funeral expense against Estate or Probate Duty and Legacy Duty, see "Deductions;" "Funeral Expenses."
2. A gift by testator to build a tomb or repair the tomb of his family (not within a church) is not charitable, and if it involves a perpetuity is void (*Rickard* v. *Robson*, 31 B. 245); but a bequest to repair or build a tomb within a church is charitable (*Hoare* v. *Osborne*, L. R. 1 Eq. 585).

TONTINE.

There is no succession as between the subscribers to a tontine in respect of the increase of benefit from time to time accruing to them upon the deaths of those of the subscribers or their nominees who have died before the ultimate division of the fund (s. 17 of 16 & 17 Vict. c. 51; *Oldfield* v. *Preston*, 3 De G. F. & Jo. 398; 10 W. R. 257.

Where, however, funds, contributed by relatives or others with an intention to benefit each other, are so settled that each settlor is to receive the interest for his life of the sum which he contributed, and that on his death his share is to pass to the survivors or survivor, then, inasmuch as the commercial element, which was the only element in the case of *Oldfield* v. *Preston* (*supra*), is entirely absent, Succession Duty would appear to be payable.

TRANSFERRED INTERESTS.

Where a succession is, before the successor has become entitled in possession, vested by alienation (not conferring a new succession, *per* Jessel, M.R., in *In re Cooper and Allen*, 4 Ch. D. 825), or by any title not conferring a new succession, in any other person, the duty in respect thereof is chargeable at the **same rate and time** as if no alienation had been made or derivative title created (s. 15 of 16 & 17 Vict. c. 51). See also "Reversionary Interests, Alienation of;" "New Succession."

TRANSITU.

Liability of goods *in transitu* to Probate Duty (*Attorney-General* v. *Pratt*, L. R. 9 Ex. 140).

TRANSMITTED SUCCESSIONS.

Where the interest of a successor in **personalty** shall, before his becoming entitled in possession, have passed by reason of death to any other successor or successors, **only one duty is payable**, and it is due from the successor first entitled in possession, at the highest rate which would have been payable by any successor if every successor had been subject to duty (s. 14 of 16 & 17 Vict. c. 51). See also "Reversionary Interests, Alienation and Devolution of."

TRINIDAD AND TOBAGO.

Date of Order in Council (Finance Act, 1894), Aug. 13, 1895.

Death Duty Act: "The Wills and Legacy Duty Ordinance, 1888" (Ord. No. 11, 1888).

SCALE.

Lineals	2*s.* 6*d.* per £100
Lineal ancestors	2 per cent.
Brothers or sisters	2½ „
Brothers or sisters of the father or mother ..	3½ „
Other persons	6 „

Exemptions.

(1) Issue of deceased, whose marriage was before June 10, 1844, and the married parties were at the time domiciled in the possession.

(2) Where the whole personal estate is under £100.

Where the whole personal estate (including any appointed by will in pursuance of a general power) exceeds £100 and does not exceed £300, the duty is 30*s.*

TRUST PROPERTY.

Liability of trust property under wills of foreigners to Succession Duty, see "Domicile."

48 Geo. 3, c. 149, s. 35, makes probates, etc., valid as to trust property, although the value may not be covered by the stamp, and ss. 36 and 37 contain provisions as to the evidence which may be required to show that the property was in fact trust property. See also s. 38 of 55 Geo. 3, c. 184.

As to directions concerning affidavits, etc., by executors, etc., residing out of England relating to trust property, see s. 50 of 55 Geo. 3, c. 184.

Estate Duty is not payable on property held by the deceased as trustee for another person under a disposition not made by the deceased, or under a disposition made by the deceased more than twelve months before his death, where possession and enjoyment of the property was *bonâ fide* assumed by the beneficiary immediately upon the creation of the trust, and thenceforward retained to the entire exclusion of the deceased, or of any benefit to him by contract or otherwise (Finance Act, 1894, s. 2 (3)).

And Estate Duty is also not payable "in the case of a lease for the use or benefit of any person for whom the grantor was a trustee" (s. 3 (1)).

TRUSTEE.

1. The term "trustee" as used—

(*a*) In 36 Geo. 3, c. 52, s. 13, includes not only an original trustee but also any subsequently appointed trustee who deals with the property subject to the duty; and where a legacy is given to different persons in succession an executor who hands over the trust fund to duly constituted trustees is thereby absolved from all liability for any duty which afterwards becomes payable, and this whether such trustees are appointed by the will or in pursuance of a power or by the Court (*Re Jones' Trust*, 21 L. J. R. (Ch.) 566).

(*b*) In 16 & 17 Vict. c. 51, includes an executor and administrator and any person having or taking on himself the administration of property affected by any express or implied trust (s. 1).

(*c*) In the Finance Act, 1894, s. 23 (13), the expression "trustee" includes a tutor, curator, and judicial factor.

TRUSTEE—*continued.*

2. Liability of—
   (*a*) For Legacy Duty (36 Geo. 3, c. 52, ss. 6, 13; 45 Geo. 3, c. 28, s. 5).
   (*b*) For Succession Duty (16 & 17 Vict. c. 51, s. 44).
   (*c*) For Estate Duty (Finance Act, 1894, s. 8 (4), (5)).
   (*d*) As to limitation of liability, see "Limitations."
3. Costs of release of, not a deduction against Legacy or Succession Duty.

TUTOR.

Liability of, to Succession Duty, see s. 44 of 16 & 17 Vict. c. 51.

U.

UNDER £20.

Legacy Duty.

A bequest of specific articles where the legatee takes a benefit under the will of less than £20, that is, in respect of property liable to Legacy Duty, is exempt from Legacy Duty (55 Geo. 3, c. 184, Sch. Part III.); but pecuniary legacies under £20 were made subject to duty by s. 42 of 44 Vict. c. 12, see "Specific Articles."

Succession Duty.

Any succession which, as estimated according to the provisions of the Succession Duty Act, 1853, is of less value than £20 in the whole is exempt from Succession Duty (s. 18).

Estate Duty.

Mortis causâ and other *inter vivos* gifts are, in practice, not taken into account, for aggregation and duty, where singly or in the aggregate less than £20.

The exemption, however, does not apply where there are several such gifts exceeding in the aggregate £20, and made in favour of one and the same person or body of persons.

However, where the deceased had been in the habit of making such gifts for a series of years so that they could fairly be regarded as part of his regular annual expenditure, such gifts are not in practice aggregated nor duty (Estate Duty or Account Duty) claimed.

UNDER £100.

i. **Legacy Duty.**

43 Vict. c. 14, s. 13, exempts from Legacy Duty estates whose gross value (English and foreign) does not amount to £100; this exemption is conceded in practice to cases where the gross estate exceeds £100, but is reduced by debts below £100, and no claim is made where the net proceeds of realty (45 Geo. 3, c. 28, s. 4; 51 Vict. c. 8, s. 21) and personalty are under £100.

ii. **Succession Duty.**

S. 18 of 16 & 17 Vict. c. 51 provides *inter alia* that "where the whole succession or successions derived from the (*a*) **same predecessor** and passing upon any death to any person or persons shall not amount in money or principal value to the sum of ONE HUNDRED POUNDS, no duty shall be payable under this Act in respect thereof or of any portion thereof."

(*a*) The titles need not be the same. For example, A. is predecessor under his will, and under a settlement. By his death B. succeeds to real estate under the will (saleable value £60); C. succeeds under the settlement to realty (saleable value £50). Neither succession exempt.

UNDER £100—*continued.*

Examples.

The principal value of the whole succession in each of the examples 1–5 is held to exceed £100.

1. A testator leaves leaseholds (principal value £500) to lineals A. and B. (£420), and to collaterals C. and D. (£80).

   A. and B. are exempt by s. 41 of 44 Vict. c. 12; but C. and D. pay Succession Duty notwithstanding the principal value of their succession is under £100.

2. A testator leaves freeholds (£80) and leaseholds (£60) to lineals.

   No Succession Duty is payable on the leaseholds (s. 41, *supra*); but the freeholds, though under £100, are (potentially) liable.

3. A testator devises freeholds (£150) thus:—one moiety to wife A., the remaining moiety to a collateral B. B. pays duty (A. being exempt, see s. 18 of 16 & 17 Vict. c. 51), though principal value (£75) under £100.

4. A. devises freeholds (£250) to son B. charged with a legacy of £180 to his (A.'s) wife C. (exempt). B. pays duty though the principal value (£70) of his succession is under £100. But see Finance Act, 1894, s. 1.

5. A. dies intestate, leaving freeholds (£240), the widow being dowable of one-third. The cesser of such dower is liable on extinction to Succession Duty though the capitalized value thereof is under £100, because it (the dower) is part of the original succession, the entire estate passing to the heir subject to the widow's right to have one-third of the lands assigned her for dower during her life.

6. A. (dying after July 1, 1888) devises freeholds (saleable value £80) to B. in fee. He directs his residuary realty to be sold and the proceeds to be given to C. The sale realized £200. No Succession Duty payable by B. (s. 18, *supra*).

   Again, A. (dying after July 1, 1888) directs his real estate to be sold (realizes £80), and the proceeds to be given to B. B. pays duty (s. 18 not applicable).

   Where, however, the personalty and the proceeds of converted realty together are under £100 in amount or value, it is not the practice to claim duty on such proceeds. See "Exemptions."

   Legacies charged on real estate and the proceeds of sale of real estate directed to be sold, are, by 51 Vict. c. 8, s. 21, taxed as if successions to personalty, but they remain "legacies," and all the laws incident to legacies attach to them.

iii. **Stamp Duty.**

Where the real estate and personal estate are each under £100 in value, or either of them are under that amount, yet if the aggregate value exceeds £100 both real and personal estate are chargeable with **Estate Duty**, and their values are to be taken into account in estimating the value of the total estate under s. 16 (1) (3) of the Finance Act, 1894.

No **Probate Duty** or **Estate Duty** payable where the estate does not exceed £100 (44 Vict. c. 12; Finance Act, 1894, s. 17).

Where representation not required for sums "under £100," see Hanson, 4th ed. p. 165.

No *donatio mortis causâ* gift or disposition *inter vivos*, voluntary settlement, etc., in favour of any person if under £100 in value, is liable to **Account Stamp Duty.** See "Exemptions."

UNDER £300.

Where the deceased died after June 1, 1881, and the gross assets (English and foreign) do not exceed £300, a fixed Stamp Duty of 30s. may be paid which will cover any claim to Legacy or Succession Duty, in respect of the estate or effects to which the affidavit or inventory relates (44 Vict. c. 12, ss. 33 and 36). And where the deceased died possessed of leaseholds subject to a mortgage created by a predecessor in title, the deduction of such mortgage debt can be taken.

See also "Fixed Duties" (as to Estate Duty).

UNDER £500. See "Fixed Duties" (as to Estate Duty).

UNDER £1000. See "Small Estates" as to exemption from Legacy, Succession and Settlement Estate Duty.

UNDISPOSED-OF.

Undisposed-of real estate passes under the general residuary devise, or, if none, to the heir.

Undisposed-of personal estate passes under the general residuary bequest, or, if none, to the next-of-kin.

Undisposed-of residue (since 1 Will. 4, c. 40, Lord St. Leonard's Act) is held by the executors as trustees for testator's next-of-kin, unless it appears by the will that the executors are to take beneficially. The Court is bound by expressions in the will, but will, in looking through it, do all in its power to exclude the executors. The burden of proving that the will shows an intention that they should take the residue personally is on the executors.

Undisposed-of share of residue passes to the next-of-kin.

Undisposed-of share of residue of proceeds of real estate passes to the heir.

See also "Intestacy;" "Escheat."

UNPAID INSTALMENTS.

(*a*) **Succession Duty.**

1. Succession by death before Aug. 2, 1894.

Where a successor is "competent to dispose by will of a continuing interest" in the property comprised in his succession, and he dies before all the instalments of Succession Duty have become due, the **unpaid instalments** are "a continuing charge on such property in exoneration of his other property," and are "payable by the owner for the time being of such interest" (s. 21 of 16 & 17 Vict. c. 51).

2. Succession by death after Aug. 1, 1894, see "Instalments."

(*b*) **Estate Duty,** see "Instalments."

USE AND OCCUPATION.

Gift to A. of the use and occupation of testator's house, gives a life interest only (*Coward* v. *Larkman*, 60 L. T. 1).

But A. may let the house (*Mannox* v. *Greener*, 14 Eq. 456); unless there is a gift over should A. cease to occupy the house (*Maclaren* v. *Stainton*, 27 L. T. Ch. 442).

V.

VALUATION.

i. *For Probate and Legacy Duty.*

Where Legacy Duty is offered on any property in specie (for example: furniture, plate, ships, etc.), it is the usual practice to require the production of an appraisement or valuation which is filed with the receipt or account; unless a

VALUATION—*continued.*

valuation has already been filed with the affidavit of value, when if the duty is presently payable a second valuation is not generally required. The authorities reserve to themselves the right to call for a detailed valuation, where, for example, the effects include a collection of valuable pictures or works of art. An appraisement for the purpose of Legacy Duty is exempted from Stamp Duty (33 & 34 Vict. c. 97; 54 & 55 Vict. c. 39).

"Where the value of the estate and effects is capable of exact definition, as in the case of stock in the public funds and the like, such value is fixed once for all by the actual market price at the date of the grant, and no further question can arise respecting it (*a*). But **where the value is simply matter of estimate,** as in the case of leasehold property, farming-stock, and the like, the true value of which can only be ascertained by actual sale, **no mere valuation can be regarded as final,** and the amount of duty to which such property is liable must be treated as unsettled **until either a sale has taken place or the administration of the estate has been concluded,** and the property handed over in specie to the persons beneficially entitled" (Hanson, 3rd ed. p. 171).

Attorney-General *v.* Dardier, 11 Q. B. D. 16.

In this case, when the residuary account was brought in, Legacy Duty was offered and accepted (Feb. 17, 1875) on certain pictures and other effects, valued at the sum of £2979 17*s.* The property was sold on May 1, 1875, and realised £31,156 19*s.* The executor intended from the first to sell the property, though he did not disclose the fact to the Commissioners, but there was no intention to deceive the Commissioners, and the fact that the property was so valuable was not known until Messrs. Christie and Manson had been consulted.

The Crown demanded additional Probate and Legacy Duty.

The Probate Duty was paid, but the claim to Legacy Duty was resisted on the ground that the valuation, made by an experienced valuer, was accepted by the Commissioners.

Judgment, however, was given in favour of the Crown, the Court holding that the property was not within the meaning of s. 22 of 36 Geo. 3, c. 52, as being "property which shall not be reduced into money."

"These words appear to us to be used as distinguishing property which is or is intended to be specifically retained by the executor for the purpose of being handed over to the legatee when the executor's duties with respect to it have come to an end, from property which is or is intended to be sold in the course of the administration and in the performance of the executor's duties, and the proceeds thereof accounted for to the legatee. We read those words as meaning **'which shall not be reduced into money during the administration,'** whereas the contention of the defendant would read them as though they had been written 'which shall not have been reduced into money when the account is carried in,'" *per* Pollock, B.

Attorney-General *v.* Smith and Cocks (1892) 2 Q. B. 289; (1893) 1 Q. B. 239.

A testator, who died in 1883, bequeathed to trustees six pictures by Sir Joshua Reynolds and Gainsborough and one by Hoare, as and for heirlooms upon trusts set forth in the will. In the inventory upon which the affidavit of value for Probate Duty purposes was based the picture by Hoare was accidentally omitted, and consequently no Probate Duty was paid upon it specifically; the six other pictures were valued at £1194 10*s.*

(*a*) See *Wishart's Executors* v. *Lord-Advocate* (*Galletly's Executors*), 18 Sco. L. R. 62.

VALUATION—*continued.*

The valuation was made by a competent valuer, and the executors stated, in answer to a question put to them by the Controller of Legacy and Succession Duties, that, if they had been directed to sell the pictures, they would have done so on the value put upon them in the valuation if more had not been offered. The executors fully administered and wound up the estate.

About five years after the death of the testator, and two years after the close of the administration, the pictures were sold for £14,500, £500 being the price realised for the painting by Hoare.

There was no suggestion of a *mala fides* on the part of the executors. The Customs and Inland Revenue Act, 1881, s. 32, enacts that "If at any time it shall be discovered that the personal estate and effects of the deceased were, at the time of the grant of probate or letters of administration, of greater value than the value mentioned in the certificate . . . the person acting in the administration of such estate and effects" shall deliver a further affidavit, duly stamped, to cover the duty upon the true value.

Held, upon an information claiming to recover from the executors further duty upon the value of the pictures, that, under the above circumstances, the executors were not, at the time of the discovery of the extra value, "persons acting in the administration of the estate," and that the Crown was not entitled to recover further duty from them.

ii. *For Estate Duty.*

Pictures, estimated to be of the value of £5 and upwards, must be separately priced, and the names of the artists given.

A valuation of furniture and effects, and pictures, should in all cases, where the value is large, be supplied. Valuations of leaseholds and real property are not necessarily held to be conclusive. The values of reversions, when accompanied by an actuarial certificate, are in general accepted.

As to value of stocks and shares, see "Stocks and Shares."

VALUE, on which duty payable, see "Payment."

VESTING.

I. **In Beneficiary.**

Where there is an express direction as to the period of vesting, nothing will vest before the appointed time. Where there is no such express direction the courts will favour the construction which will result in an early vesting.

(*a*) Gift of real estate.

Real estate is devised to B. and his heirs, "if" or "when" he attains 21.

Rule:—The devise is contingent, and B. takes no interest until he attains 21.

However—

1. B. will take a vested interest where some third person, A., takes a prior estate either for B.'s benefit or for that of some other person to endure during the minority of B. (*Boraston's Case*, L. C. Convey, 809).

For example, in a devise to W. (widow) till testator's son B. should attain 21, and upon B.'s attaining 21 to B. and his heirs, the devise was held to have vested in B. upon testator's death (*Manfield* v. *Dugard*, 1 Eq. A. C. 195, pl. 4).

2. B. will take a vested interest where the devise is to A. for life and

VESTING—*continued.*

from and after his decease to B. if or so soon as he shall have attained the age of 21 (*Andrew* v. *Andrew*, 25 L. J. Ch. 779).

3. B. will take a vested interest where there is a gift over should he die under 21, for the gift over will show that B. is to take whatever the person claiming under the devise over is not entitled to, that is, the immediate interest.

In the case of a devise to those of a class who attain 21, the devise is contingent, even though preceded by a life estate, so that if none of the class have attained 21 at the death of the tenant-for-life, the devise over, if any, will take effect (*Edward* v. *Hammond*, 3 Lev. 132; *Festing* v. *Allen*, 12 M. & W. 279).

4. Where there is a gift to A. for life if she shall so long remain unmarried, or for life until bankruptcy, followed by a gift over on marriage or bankruptcy, the remainder is not contingent but vested so as to take effect either upon the death or marriage or bankruptcy of the tenant-for-life (*Luxford* v. *Cheek*, 3 Lev. 125; *Underhill* v. *Roden*, 2 Ch. D. 494).

Where a testator gave a residue to A. for her life or during widowhood, and an annuity to her on her remarriage, and directed legacies to be paid on her death, it was held that the legacies were not raisable on her remarriage but only on her death (*In re Tredwell: Jeffrey* v. *Tredwell* (1891) 2 Ch. 640).

(*b*) Money charged on land.

If the legacy "is given at 21, or payable at 21, and the child does not attain 21, the legacy is not raisable" (*Parker* v. *Hodgson*, 1 D. & S. 568).

If, however, the payment is postponed not from circumstances personal to the legatee, for example, his attaining 21, but for the convenience of the estate, as where there is a preceding life estate, the legacy will vest before the time for payment arrives (*Evans* v. *Scott*, 1 H. L. Cas. 57). If the legatee predeceased the tenant-for-life, his representatives will nevertheless be entitled to the legacy.

If a legacy, charged upon land, is directed to be paid upon an event which may never happen, the gift is contingent (*Taylor* v. *Lambert*, 2 Ch. D. 177).

Where the donee of a power is authorised to fix the times when portions are to vest, he can direct a portion to vest at once, and in this case the portion will be raisable though the child should die under 21 (*Henty* v. *Wrey*, 30 W. R. 715).

(*c*) Gift of personal property.

Where there is an express direction that the gift is to vest at a certain period, the legatee will take no interest until then, unless the meaning of the word "vested" may be considered to be equivalent to "payable." For example, where there is a gift to A. to be vested in him or to be paid to him when he attains 21, A. will take an immediate interest.

And where there is a direction to pay legacies at the death of the tenant-for-life, a subsequent direction as to the vesting at 21 will not make the legacies contingent, "vesting" here being considered equivalent to indefeasible or payable (*Barnet* v. *Barnet*, 29 Beav. 239).

Where there is no direction as to the period of vesting—

1. In the case of a clear gift, with an additional direction that it is to

VESTING—*continued.*

be paid when the legatee attains a given age, the interest will be vested, the payment only being postponed.

For example, bequest to A. payable at 21. The gift is vested, and if A. die under 21 his representatives are entitled.

The vesting of the gift will not in this case be affected by a direction to accumulate the interest till A. attains 21.

Bequest to the children of A., equally, to be divided among them on attaining 21. Here the gift vests in the children at birth.

The time when the legacy is to be paid must be certain, that is, a time which will come if the legatee lives long enough; therefore a gift to A. to be paid on his marriage is contingent, unless interest is given in the mean time.

2. In the case of a gift to A. at, or if, or as and when he shall attain, or upon attaining, or from and after attaining a given age, the legacy will be contingent (*Hanson* v. *Graham*, 6 Ves. 239).

But if the gift is to A. when he attains a given age with (*a*) a gift of the interest meantime, or (*b*) a direction to apply the interest (or any part thereof) for his maintenance, the gift is vested.

Where, however, trustees have a discretionary power to apply the interest to maintenance or to accumulate it, the gift will not be vested; nor, possibly, where there is a discretion to apply the whole or part of the interest not exceeding a fixed sum; nor where the sum directed to be expended for maintenance is fixed, although equal to the interest of the legacy (Theobald, 4th ed. p. 465).

So also where the gift is to A. when he attains a given age and the legacy is directed to be at once separated from the rest of the estate.

Again, a gift to A. at 21 with a gift over upon his death under 21 and without issue, vests the legacy (*Harrison* v. *Grimwood*, 12 B. 192).

(*d*) Money charged upon real estate and personal estate.

Where a legacy is charged upon realty and personalty, such legacy is primarily payable out of the personal estate, and so far as the personal estate extends the rules as to vesting are those which apply to personalty, but so far as the legacy is payable out of realty the rules with regard to money charged on land apply.

II. **In legal personal representative.**

On death of a testator or intestate his personal estate (including chattels real) vests in the executor or administrator or administrator with will annexed (*Wyman* v. *Carter*, L. R. 12 Eq. 309), and although chattels real may be specifically bequeathed, the executor can sell them to pay debts and confer a good title on the purchaser without the concurrence of the specific legatee.

Hitherto, however, real estate, devised by will, has passed directly to the devisee, and, on intestacy, to the heir-at-law, and the executor or administrator has had no power to touch it; but now see "Land Transfer Act, 1897."

VICTORIA.

Date of Order in Council (Finance Act, 1894), Feb. 8, 1896.

Death Duty Acts: "Administration and Probate Act, 1890" (54 Vict. No. 1060); "Administration and Probate Act, 1892" (56 Vict. No. 1261).

VICTORIA—*continued.*

The duty is payable on the value of the real and personal estate after deducting debts; and where a Grant of Probate or Administration is limited to any special property, the duty is payable on the value of that property, after deducting the amount of any mortgages, charges or liens thereon.

SCALE.

Value of Property Liable to Duty.	Rate of Duty per cent.
Value of Estate—	
Does not exceed £1000	Nil.
Exceeds £1,000, but does not exceed £5,000	2
„ 5,000 „ „ 6,000	3
„ 6,000 „ „ 7,000	3 1/5
„ 7,000 „ „ 8,000	3 2/5
„ 8,000 „ „ 9,000	3 3/5
„ 9,000 „ „ 10,000	3 4/5
„ 10,000 „ „ 12,000	4
„ 12,000 „ „ 14,000	4 1/5
„ 14,000 „ „ 16,000	4 2/5
„ 16,000 „ „ 18,000	4 3/5
„ 18,000 „ „ 20,000	4 4/5
„ 20,000 „ „ 22,000	5
„ 22,000 „ „ 24,000	5 1/5
„ 24,000 „ „ 26,000	5 2/5
„ 26,000 „ „ 28,000	5 3/5
„ 28,000 „ „ 30,000	5 4/5
„ 30,000 „ „ 32,000	6
„ 32,000 „ „ 34,000	6 1/5
„ 34,000 „ „ 36,000	6 2/5
„ 36,000 „ „ 38,000	6 3/5
„ 38,000 „ „ 40,000	6 4/5
„ 40,000 „ „ 44,000	7
„ 44,000 „ „ 48,000	7 1/5
„ 48,000 „ „ 52,000	7 2/5
„ 52,000 „ „ 56,000	7 3/5
„ 56,000 „ „ 60,000	7 4/5
„ 60,000 „ „ 64,000	8
„ 64,000 „ „ 68,000	8 1/5
„ 68,000 „ „ 72,000	8 2/5
„ 72,000 „ „ 76,000	8 3/5
„ 76,000 „ „ 80,000	8 4/5
„ 80,000 „ „ 84,000	9
„ 84,000 „ „ 88,000	9 1/5
„ 88,000 „ „ 92,000	9 2/5
„ 92,000 „ „ 96,000	9 3/5
„ 96,000 „ „ 100,000	9 4/5
„ 100,000	10

VOID ADMINISTRATION. See "Revocation of Grant."

VOID FOR UNCERTAINTY.

1. Gift by will to one of the sons of A. is void, although at testator's death only one son of A. may be living (*Strode* v. *Russell*, 2 Vern. 621, 624).

VOID FOR UNCERTAINTY—*continued.*

2. A bequest for objects of liberality or benevolence, or for purposes of general utility, or for charitable or other indefinite purposes (where it does not appear that the chief object was charity), is void for uncertainty.
3. A gift to A. and B. upon trust to dispose of as they shall think fit is void for uncertainty (*Fowler* v. *Garlike*, 1 R. & M. 232).
4. Bequests are also void for uncertainty where it is impossible to ascertain the subject matter or the objects of the gift (*Asten* v. *Asten* (1894), 3 Ch. 260; *Buckley* v. *Buckley*, 19 L. R. Ir. 544). See further, Theobald, 4th ed.

VOLUNTARY CONVEYANCES ACT, 1893, EFFECT OF—

Enacts that (save as regards subsequent purchasers, mortgagees, and lessees who have become such before June 29, 1893) no voluntary conveyance which shall have been in fact made *bonâ fide* and without any actual fraudulent intent, shall henceforth be deemed fraudulent and void within the meaning of 27 Eliz. c. 4; so that now a voluntary settlement of lands is as favourably situated as a voluntary settlement of pure personal estate, made on any lawful consideration. Under the statute of 27 Eliz. c. 4, a mere post-nuptial voluntary settlement, without any ante-nuptial agreement, either verbal or written, was void as against a subsequent purchaser for value, even with notice. Now, however, such a settlement would be protected by the above Act of 1893.

VOLUNTARY DEBT.

The power to deduct debts from the value of the estate and effects as specified in the account annexed to the affidavit, or whereof the inventory shall be exhibited, which is conferred by s. 28 of 44 Vict. c. 12, does not apply to VOLUNTARY debts expressed to be payable on the death of the deceased, or payable under any instrument which shall not have been *bonâ fide* delivered to the donee thereof three months before the death of the deceased.

24 & 25 Vict. c. 92, s. 3, also provides that no return of Probate Duty is to be made in respect of debts of this character. And see Finance Act, 1894, s. 7, which enacts (*inter alia*) that no allowance shall be made for debts incurred by the deceased, or incumbrances created by a disposition made by the deceased, unless such debts or incumbrances were incurred or created *bonâ fide* for **full consideration in money or money's worth.**

By a voluntary debt is meant a debt not in consideration of marriage, or of money or money's worth.

VOLUNTARY DISPOSITION.

Any property taken under a **voluntary disposition,** made by any person, dying on or after June 1, 1881,† purporting to operate as an immediate gift *inter vivos*, whether by way of transfer, delivery, declaration of trust or otherwise, which shall not have been *bonâ fide* made **three months before the death of the deceased,** is, where above £100 in value, liable to Account Stamp Duty (44 Vict. c. 12, s. 38, 2 (*a*)).

This sub-s. was amended by s. 11 (1) of 52 Vict. c. 7, as follows:—

"The description of property marked (*a*) shall be read as if the word '**twelve**' were substituted for the word '**three**' therein, and the said description of the property shall include property taken under any gift, whenever made, of which property *bonâ fide* possession and enjoyment shall not have been

† And before Aug. 2, 1894 (Finance Act, 1894).

VOLUNTARY DISPOSITION—*continued.*

assumed by the donee immediately upon the gift and thenceforward retained, to the entire exclusion of the donor, or of any benefit to him by contract or otherwise." See further "Gifts *inter vivos*."

VOLUNTARY SETTLEMENT.

Any property passing under any past or future **voluntary settlement**, made by any person, dying on or after June 1, 1881,† by deed or any other instrument not taking effect as a will, whereby an interest in such property for life or any other period determinable by reference to death is reserved either expressly or by implication to the settlor, or whereby the settlor may have reserved to himself the right, by the exercise of any power, to restore to himself, or to reclaim the absolute interest in such property, is, where above £100 in value, liable to Account Stamp Duty (44 Vict. c. 12, s. 38, 2 (*c*)).

This sub-s. was amended by s. 11 (1) of 52 Vict. c. 7, as follows:—

"The description of property marked (*c*) shall be construed as if the expression 'voluntary settlement' included any trust, whether expressed in writing or otherwise, in favour of a volunteer, and, if contained in a deed or other instrument effecting the settlement, whether such deed or other instrument was made for valuable consideration or not as between the settlor and any other person, and as if the expression 'such property,' wherever the same occurs, included the proceeds of sale thereof."

Examples.

Voluntary Settlement. 44 Vict. c. 12, s. 38 (*c*), as amended by 52 Vict. c. 7, s. 11 (1).

Account Stamp Duty and Succession Duty.

1. A., who died after June 1, 1881,† assigned LEASEHOLDS (value above £100) to his brother, B.
   The deed contained a power to revoke.
   Account Stamp Duty payable.
2. A., who died after June 1, 1881,† conveyed real estate to his son, B., in fee simple, reserving, however, to himself a life interest therein, Account Stamp Duty, being only imposed on personal estate, is not payable, but Succession Duty is payable (1 per cent. or 1½ per cent.) (16 & 17 Vict. c. 51, s. 7; 51 Vict. c. 8, s. 21).
3. A. settles, by voluntary settlement,
   (*a*) Certain stock (£5000),
   (*b*) Leaseholds (£4000),
   (*c*) Freeholds (£7000),
   Upon trust to pay the rents and profits to settlor (*ob.* 1890) for life, remainder to his brother (B.) absolutely.
   Account Stamp Duty is payable upon (*a*) and (*b*), the values being taken as at the date of the account, with accretions (rents and dividends).
   Temporary Estate Duty, however, is not payable on the Account, the amount chargeable to Account Duty being under £10,000.
   Succession Duty is payable on (*c*) at 4½ per cent., and on (*a*) and (*b*) at 3 per cent. (51 Vict. c. 8, s. 21, sub-s. 1); and Temporary Estate Duty is payable on the succession (£16,000), see 52 Vict. c. 7, s. 6.
4. A., by voluntary settlement, settles £10,000 upon trust to invest, and

† And before Aug. 2, 1894 (Finance Act, 1894).

VOLUNTARY SETTLEMENT—*continued.*

out of the income to pay £200 per annum to himself for life, and the surplus income to B. during his (A.'s) life, and subject thereto to B. absolutely.

Account Duty is payable on A.'s death (1882) upon the whole fund, and Succession Duty on the cesser of the annuity of £200 per annum.

The duty in the latter case being calculated on an annuity of £200 to B. in perpetuity (Table III., 95 years certain).

Where the annuity reserved is such (say £425) that its value for 95 years certain (Table III.) exceeds £10,000 (the value of the settled fund), then duty is assessed on £10,000 only.

5 A. settles, by voluntary settlement,

(*a*) Freeholds at Lewes,

(*b*) Freeholds at Crewe,

(*c*) Freeholds at Falmer,

Upon the following trusts :—

To sell (*a*) and invest the proceeds in Government securities, and to pay the dividends arising from such investment, and the rents issuing out of (*b*) and (*c*), to settlor for life (*ob.* 1883), remainder to sister, B., absolutely.

Power to sell (*b*) and treat the proceeds as in (*a*).

Power also to sell (*c*), and direction to invest the proceeds in the purchase of other real estate, and until so laid out to invest the proceeds as in (*a*).

At the settlor's death (*a*), (*b*), and (*c*) respectively are represented by £2560 15*s.*, £2500, and £2509 13*s.* 4*d.* consols.

Account Duty is payable on (*a*) and (*b*), but not on (*c*), which last, though personalty, is real estate in equity.

Succession Duty is payable on the whole fund.

6. A., by voluntary settlement, settles £10,000 upon trust for himself for life (*ob.* 1884), remainder equally among his four children, B., C., D., and E.

B. attained a vested interest in one-fourth of the fund, and predeceased A.

Probate Duty is payable on B.'s reversionary interest in his one-fourth share, or later on in respect of the whole of said share, when it falls into possession on A.'s death (*Lord* v. *Colvin*, L. R. 3 Eq. 737), on which death Account Duty is also payable on the whole (four-fourths) fund.

7. A., by voluntary settlement, settles £10,000 upon trust for himself during the joint lives of himself and B., and upon his (A.'s) death to B. for life, and upon B.'s death to A. absolutely.

B. survives A., who dies in 1885.

On A.'s death B.'s life interest is chargeable with Account Duty, and the value of A.'s reversionary interest in the £10,000, or the whole capital, if payment is deferred till B.'s death, is chargeable with Probate Duty under A.'s estate.

8. A. settles, by voluntary settlement, £10,000 to himself for life, remainder to his son B.

B. dies 1889, intestate, leaving A. his next of kin.

A. dies 1890.

VOLUNTARY SETTLEMENT—*continued.*

The whole fund pays Account Duty under the voluntary settlement, and Probate Duty (less the Account Duty) under B.'s intestacy, and Probate Duty (less the Account and Probate Duty) under A.'s estate.

9. A. settles, by voluntary settlement, £5000 to himself for life (*ob.* 1889), remainder to his son B. A. subsequently releases his life interest.

B. pays Succession Duty, and not Account Duty, at A.'s death.

10. A. insures his life in 1872, and pays the premium till 1882, and then voluntarily assigns to B., who pays the premium till A.'s death in 1892. A. has paid ten premiums, and B. also ten.

Account Duty and Succession Duty will be payable on one-half only of the policy moneys.

11. A., by voluntary settlement, settles £4000 upon trust for himself for life (*ob.* 1889), remainder to collaterals, X., Y., Z.; B. also, by said settlement, voluntarily settles £3000 upon the same trusts.

On A.'s death Account Duty is payable on £4000, and Succession Duty on the whole fund (£7000), A. being predecessor as to £4000, B. as to £3000.

12. A. (a married woman), by voluntary settlement, settles £10,000, to which she is entitled as her separate property, upon trust for herself for life (*ob.* 1890), remainder to her children.

Account Duty is payable upon the fund on A.'s death, but not Succession Duty (s. 41 of 44 Vict. c. 12).

13. A. (a married woman), by voluntary settlement, settles certain choses in action (not her separate property) upon trust for herself for life (*ob.* 1890), remainder to her husband, B., for life, remainder to her children.

Where the husband has actually or constructively reduced the property into possession he is the settlor; otherwise the wife is.

14. A., on the occasion of her marriage, settles £400 East India Stock upon trust for herself for life (*ob.* 1890), remainder, in default of issue (none), to her husband for life (predeceased A.), remainder to D., E., and F. (strangers).

Account Duty (D., E., and F. being volunteers) and Succession Duty on the fund on A.'s death.

15. A. settles, on her marriage, £5000 upon trust for herself for life (*ob.* 1891), remainder thus:—

Seven-thirteenths to her husband;

Two-thirteenths to C. (stranger, illegitimate child of A.).

Four-thirteenths to D. (stranger, illegitimate child of A.).

Formerly no claim was made for Account Stamp Duty in respect of the shares passing to C. and D., who were held to be within the marriage consideration and therefore not volunteers (*Clarke* v. *Wright*, 6 H. & N. 849); but see recent decision in *De Mestre* v. *West* ((1891) App. Cas. 264), which overruled *Clarke* v. *Wright*, p. 480.

16. A. settles, on his marriage, certain real estate upon trust to sell, and proceeds to settlor during joint lives of himself and his wife, B. (who predeceased A.),

Remainder to survivor (A.) for life (A. died in 1891),

Remainder to children of A. by W. (his former wife), and the children of this marriage at 21 or (daughters) marriage.

VOLUNTARY SETTLEMENT—*continued.*

As the children take as a mixed class, it appears that Account Duty is not payable in respect of the share taken by the children of the former marriage, and that Succession Duty only is payable in respect of the share taken by the children of either marriage (s. 41 of 44 Vict. c. 12). If, however, at A.'s death only children by the former marriage are entitled (there having been no children by the second marriage, or all having died without attaining vested interests), then Account Duty is payable.

Limitations in favour of the husband's children by a former marriage on the occasion of his second marriage are held to be voluntary and not within the marriage consideration (*Re Cameron and Wells*, 37 Ch. D. 32).

17. A., on the occasion of her marriage, settles certain moneys (including her reversionary interest under her parents' marriage settlement, expectant on the death of her mother, M., then living)

Upon trust for herself (A.) for life (*ob.* 1890);
Remainder to husband (B.) for life (*ob.* 1891);
Remainder to issue of the marriage (none);
Remainder, in default of issue, to settlor's next-of-kin, as if she had died a *feme sole*, having survived her husband.

Account and Succession Duty are payable on the fund on B.'s death; further Account and Succession Duty being payable on the fund falling in on the death of the mother, M.

18. A. settles, by voluntary settlement, £10,000 upon trust for himself for life (*ob.* 1891), and upon his death to his children as he shall appoint, and, in default of appointment, equally among such as shall attain 21 or (daughters) marry.

A., in contemplation of the marriage of his daughter X., appoints to her an aliquot share of the £10,000.

Account Stamp Duty is only payable on the property which actually PASSES under the voluntary settlement, and not upon the property which, though originally comprised therein, has been taken out of it by means of the exercise of any power, or otherwise, in the settlor's lifetime.

If, however, the property so taken out of the settlement has been handed over to the expectant owner in acceleration of his succession (see "Acceleration"), Succession Duty will be payable thereon, the exemption in s. 41 of 44 Vict. c. 12, not applying under the circumstances. See "Advances."

19. A. settles, by voluntary settlement, £5000 upon trust for B. (wife) for life (*ob.* 1889) for her separate use, remainder to A. for life, remainder to their children.

Account Duty is due on A.'s death (1884), but deferred till the death of B. (1889).

Where any sums are advanced (after A.'s death) by B. to the children, Account Duty is payable thereon at the time such advances are made.

A deduction, however, may be taken of the value of B.'s life interest in the sums advanced.

20. A. settles, by voluntary settlement, £2000 upon trust for himself for life (*ob.* 1891), remainder to B.

VOLUNTARY SETTLEMENT—*continued.*

B. can pay Account Duty on the fund, less the value of A.'s life interest therein.

Should A. subsequently surrender his life interest to B., no return of Account Duty can be allowed.

21. A. settles £3000 upon trust for himself for life (*ob.* 1891), remainder to B. (wife) for life, remainder to their children.

Account Duty is payable on A.'s death, and this although the CAPITAL does not "PASS" in possession to the children until B.'s death, or until it is advanced to them in her lifetime.

22. A. settles, by voluntary settlement, a certain fund upon trust for B., C., and D. A power of revocation is reserved. A. dies in 1882.

Although A. does not reserve any interest for life, or other period determinable by reference to death, yet Account Duty is payable on his death, for such death removes the possibility of the interest of B., C., and D. being divested by the exercise of A.'s power to revoke. It then passes to them absolutely.

23. A. settles £2000 by voluntary settlement upon trust for B. for life, remainder to B.'s children as B. should appoint.

A. reserves a power to revoke.

B. appoints one-fourth of the fund, on the occasion of the marriage of one of her daughters, C., which share is settled upon the usual trusts.

A. dies in 1891 without exercising the power to revoke.

Account Duty is payable on the three-fourths of the settled fund, but not on the one-fourth appointed in favour of the daughter, if it can be shown that A. was privy to C.'s marriage, and knew that a settlement was being made on the faith that the daughter took a share under the voluntary settlement.

24. A., by ante-nuptial settlement, settled certain funds upon the usual trusts, viz. to himself for life (*ob.* 1890),

Remainder to B. (intended wife) for life,

Remainder to the children of the marriage.

A. subsequently, at various times, purchased certain stocks in the names of trustees, to be held by them on similar trusts to those contained in the said settlement.

Here the marriage settlement, though not a voluntary settlement as regards the funds originally settled, is held to be practically a voluntary settlement with reference to the funds subsequently purchased, and Account Duty is payable thereon on the death of the settlor, A. See sub-s. 2 (*c*) of s. 38 of 44 Vict. c. 12, as amended by 52 Vict. c. 7, s. 11 (1).

Estate Duty.

Note that Estate Duty is payable on property passing by a death on or after Aug. 2, 1894, whether the property be **real** or personal, and whether **settled "voluntarily" or otherwise** (Finance Act, 1894, s. 2 (1 *c*)).

Decided Cases.

1. Crossman *v.* The Queen (18 Q. B. D. 256).

By deed dated July 12, 1883, the settlor, in pursuance of a power given by articles of partnership, appointed and transferred to his sons two shares in the partnership business, as from Oct. 1, 1883, or as from the settlor's death, which should first happen, provided that such appointments were conditional

VOLUNTARY SETTLEMENT—*continued.*

upon the execution by the sons before Oct. 1, 1883, of a deed covenanting to pay to the settlor, from Oct. 1, 1883, during his life, interest at 4 per cent. per annum on the value of the shares appointed as aforesaid, and to pay out of the profits certain annuities to other persons.

The sons executed this last-mentioned deed on July 12, 1883.

The settlor died on July 19, 1883.

Held, that the transfer of the shares was a **voluntary settlement** within the meaning of the Customs and Inland Revenue Act, 1881 (44 Vict. c. 12, s. 38, sub-s. 2), and that by it an interest for life in the property transferred was reserved to the settlor, and therefore duty was payable under that section on the amount of the shares so transferred.

2. **Attorney-General** *v.* **Heywood (18 Q. B. D. 326).**

A., by a **voluntary settlement**, had assigned property to trustees, the income to be applied at their discretion for the benefit of A. and his wife and children; or at their discretion for the benefit of one or more of them to the exclusion of others; and after A.'s death the property was to be held subject to trusts for the benefit of the widow and children.

Held, that, notwithstanding the discretionary power given to the trustees to deprive the settlor of the benefit, an interest for life was reserved to him.

3. **Attorney-General** *v.* **Theobald (24 Q. B. D. 557).**

By a marriage settlement, dated Aug. 6, 1873, made on the marriage of A. and B., certain personalty of B. was settled upon trust for her (B.) for life (*ob.* 1885), with **ultimate trusts for her next-of-kin**, which took effect (in 1885) in the events which happened.

Account Stamp Duty was claimed under s. 38 (*c*) of 44 Vict. c. 12.

The defendants (the trustees of the settlement) refused to pay the Stamp Duty on the ground that the settlement was one made in consideration of marriage, and therefore was not a "voluntary settlement" within s. 38.

Held, that the provisions of s. 11 of the 52 Vict. c. 7 were **retrospective**, and that the construction provided by that section must be applied to the description of property sought to be taxed, and this although the property passed to the beneficiaries, and the proceedings to recover the duty were taken before the second Act came into force.

"The earlier Act must be read as having the meaning declared by the later Act" (*per* Pollock, B.).

4. A limitation in an ante-nuptial settlement to the issue of a settlor by a prospective second marriage was held to be not voluntary (**Clayton** *v.* **Lord Wilton**, 6 M. & S. 67; **Newstead** *v.* **Searles**, 1 Atk. 264), but a settlement by a widower in favour of his children by a former marriage, made by him when about to contract a second marriage, was held to be a voluntary settlement (**In re Cameron and Wells**, 37 Ch. D. 32).

5. **De Mestre** *v.* **West (1891), App. Cas. 264.**

A limitation in a marriage settlement in favour of the settlor's illegitimate children and his issue not being within the marriage consideration, may be defeated by a subsequent conveyance by the settlor to a purchaser for value; unless such result would involve the defeat of the limitation within the marriage consideration.

Special agreement between the parties thereto in favour of the limitation, acceptance by one of the parties of different interests in the settled property from those which the law would have given, omission to provide therein for

VOLUNTARY SETTLEMENT—*continued.*

all or some of the issue of the marriage, are insufficient to support such limitation against a purchaser for value.

Mackie v. *Herbertson* (9 App. Cas. 303) approved.

Clarke v. *Wright* (6 H. & N. 849) dissented from.

Newstead v. *Searles* (1 Atk. 264), and *Clayton* v. *Lord Wilton* (6 M. & S. 67) explained.

"The order of the limitations in both those cases (*Newstead* v. *Searles*; *Clayton* v. *Lord Wilton*) was such, that the limitations which were not within the marriage consideration were covered by those which were, so that those which were within the marriage consideration could not take effect in the form and manner provided by the instrument without also giving effect to the others. It was on that ground, and not from any special favour to provisions for the benefit of children who were not issue of the marriage, that their Lordships consider both these cases to have been determined. If similar circumstances should occur in any other case, it may be inferred from what was said in the House of Lords in *Mackie* v. *Herbertson*, that the same principle would be applied; and indeed the principle seems to be clear; for the settlement in any such case could not be defeated without defeating the interests of children unquestionably within the consideration of marriage" (*per* Lord Selborne). See also *Attorney-General* v. *Jacobs-Smith* (1895), 2 Q. B. 341.

6. **Attorney-General** *v.* **Chapman (1891), 2 Q. B. 526.**

By a settlement made in consideration of marriage, H. transferred personal property to trustees upon trust to pay the income to herself for life; and, if certain events should happen, after her death upon trust for such person or persons as she, notwithstanding coverture, might appoint. The events happened, and H. died in 1888, having, during her coverture, by deed exercised the power of appointment in favour of a niece.

Held, that the property so appointed to the niece must be taken to be property "passing under" the marriage settlement, that the settlement and deed of appointment **constituted a voluntary settlement**, whereby a life interest was reserved to the settlor within the meaning of s. 38, sub-s. 2 (*c*) of 44 Vict. c. 12, as amended by s. 11 of 52 Vict. c. 7, and therefore that duty was payable in respect of such property.

7. **Attorney-General** *v.* **Gosling (1892), 1 Q. B. 545.**

By a deed made in 1877 between G. and his partners, it was provided that he might by deed or will dispose of his shares in the business to any one among a limited class of his descendants, and that if no such disposition were made the shares should be forfeited after the death of G. It was further provided that no person should enjoy any share in the business until he had been certified by the senior partners as duly qualified. G. died in 1889, having by his will, in pursuance of the power given him by the deed of 1877, devised to his eldest son all his shares in the business. The son had been duly certified as qualified, and had been admitted as a partner in the business.

Held, that the deed of 1877 **constituted a voluntary settlement** whereby a life interest was reserved to G. within the meaning, s. 38 of 44 Vict. c. 12, and s. 11 of 52 Vict. c. 7, and therefore that duty was payable in respect of the shares.

8. **Attorney-General** *v.* **Wendt (1895), 65 L. J. Q. B. 54.** See "Partnership."

VOLUNTARY SETTLEMENT—*continued.*

9. Attorney-General *v.* **Rathdonnell, 32 L. R. Ir. 574.**

W. (wife), by an ante-nuptial marriage settlement, settled £5000 upon trust after death of W. and H. (husband), and in the events which happened, to pay off certain incumbrances secured on property of which H. was then tenant-for-life in remainder, and out of which a jointure was secured to W. On death of W., who survived H., the said property passed to S., a stranger in blood.

Held, that Account Stamp Duty was payable on the £5000 as passing on the death of W. to a volunteer.

10. Lord-Advocate *v.* **Wilson (1894), 21 S. S. C., 4th Ser. 997.**

F., the father, transferred to his three sons, partners, the whole of his stock-in-trade, and the goodwill of his business. The sons undertook to grant a bond of annuity in favour of F. for life, and on his death in favour of M. (their mother) for life, the annuity being equal to 5 per cent. on the value of the said stock-in-trade.

Account Stamp Duty was held payable on the ground that there was a reservation (*q.v.*) of a benefit.

VOLUNTARY SUBSCRIPTION.

It is not the practice to claim duty in respect of money raised by voluntary subscription.

Voluntary subscriptions cannot be deducted against Probate (or Legacy) Duty (*Creed* v. *Henderson*, 54 L. J. Ch. 811).

VOLUNTARY TRANSFER INTO JOINT NAMES. See "Joint Investment."

W.

WASTING PROPERTY.

Where there is a residuary bequest of personal estate to be enjoyed by several persons in succession, a Court of Equity, in the absence of any evidence of a contrary intention, will direct the conversion into permanent investments of a recognised character of all such parts of the estate as are of a wasting or reversionary character (*Howe* v. *Earl of Dartmouth*, 7 Ves. 137; *Pickering* v. *Pickering*, 4 M. & Cr. 289).

WESTERN AUSTRALIA.

Dates of Orders in Council, July 16, 1895; Aug. 1, 1896.

Death Duty Act: "The Duty on Deceased Persons' Estates Act" (59 Vict. No. 18).

The duty which is imposed on both real and personal property is in the nature of an Estate Duty.

Exemptions.

(1) An estate under the value of £1,500;

(2) The first £1,500 in an estate under the value of £2,500;

(3) On property passing to parent, issue, husband, wife or issue of husband or wife, one-half the ordinary rates of duty are payable.

WESTERN AUSTRALIA—*continued.*

SCALE.

Value of Property Liable to Duty.				Rate of Duty per cent.
Estate under £1,500	.. ..	..	{ 1 on excess above £500.	
Exceeds 1,500	but does not exceed £5,000	..	2 on whole value	
„ 5,000	„ „ 10,000	..	3	„
„ 10,000	„ „ 20,000	..	4	„
„ 20,000	„ „ 30,000	..	5	„
„ 30,000	„ „ 40,000	..	6	„
„ 40,000	„ „ 60,000	..	7	„
„ 60,000	„ „ 80,000	..	8	„
„ 80,000	„ „ 100,000	..	9	„
„ 100,000	.. ..	..	10	„

WHEN DUTY PAYABLE. See "Payment."

WIDOW.

1. Not liable to Legacy or Succession Duty, see "Exemptions."
2. When entitled to dower or freebench, see "Dower;" "Freebench."
3. Share of personal estate taken by.
   (*a*) **Under the Statutes of Distribution,** see "Descent of Personal Estate."
   (*b*) **Under the Intestates' Estates Act,** 1890 (53 & 54 Vict. c. 29)—
   Where a man dies intestate* *after Sept.* 1, 1890, leaving a widow and *no issue*, then—
   If the net value of his realty and personalty does NOT EXCEED £500, the widow is to take ALL (s. 1).
   If such net value EXCEEDS £500, the widow is to take £500 as a charge on the estate with interest at the rate of 4 per cent. per annum from the death (s. 2).
   Such charge to be borne rateably by the realty and personalty (s. 3).
   Such charge to be in addition and without prejudice to the widow's share and interest in the residue of such realty and personalty (s. 4).
   For the purposes of the apportionment of the said charge, the VALUE of the REALTY to be taken thus—
   In the case of a fee simple, upon the basis of 20 years' purchase of the property tax assessment less mortgages, annuities (valued according to the tables and rules in the schedule annexed to the Succession Duty Act) (16 & 17 Vict. c. 51) (s. 5).
   In the case of an estate for life or lives, according to the said tables and rules (s. 5).
   The VALUE of the PERSONALTY to be the net value after deducting from the gross value all debts, funeral and testamentary expenses (s. 6).
   The Act does not extend to Scotland.
4. Where a settlement by a widow, when about to contract a second marriage, is made in favour of her children by a former marriage, these children will be held to be within the marriage consideration, as well as the issue of the second marriage (*Newstead* v. *Searles*, 1 Atk. 265; but see *De Mestre* v. *West* (1891) App. Cas. 264), "Voluntary Settlement."
5. Legacy to, when entitled to priority, see "Abatement."

* That is, wholly intestate, as the Act is held not to apply to partial intestacies, see *Twigg* v. *Brown*, 40 W. R. 297.

WIDOW—*continued.*

6. *Legacy to, in lieu of dower* (*a*).

A legacy bequeathed to a widow in lieu of dower has priority only where the testator had, in fact, at the date of his death, lands out of which she was and remained dowable notwithstanding the will (*Roper* v. *Roper*, 24 W. R. 1013; *Greenwood* v. *Greenwood*, 1892, 2 Ch. 295; 3 & 4 Wm. 4, c. 105, s. 12). Such a legacy carries interest only from the expiration of a year from the testator's death (*Re Bignold*, 45 Ch. D. 496).

A legacy to a widow in lieu of dower is held to be a purchase, and the widow, in the event of the assets proving insufficient for payment of legacies in full, is, as purchaser, entitled to priority (*Heath* v. *Dendy*, 1 Russ. Chanc. Cas. 543).

A widow now entitled to her dower out of money of her husband directed to be laid out in land (3 & 4 Wm. 4, c. 105, s. 2).

A dowress is entitled to redeem.

The widow's charge of £500 under the Intestates' Estates Act, 1890, is paramount to her right to dower, so that the widow is only entitled to dower out of so much of the intestate's real estate as remains after payment thereout of its proper proportion of her charge of £500, which is borne by the intestate's real and personal estates in proportion to their values (*Re Charriere*, 74 L. T. 650).

7. On the death of her husband intestate, administration may be granted to both the widow and the next-of-kin; but the Court prefers a sale to a joint administration, and, under ordinary circumstances, the election of the Court is in favour of the widow. Where a joint grant is made to the widow and one of the next-of-kin, all the other next-of-kin must give their consent for the grant to be made (*In the goods of Newbold*, L. R. 1 P. & D. 285).

8. Entitled to her chattels real (not alienated) and choses in action (not reduced into possession), her separate property, and her paraphernalia (if not disposed of by her husband by act *inter vivos*, or not employed in payment of his debts).

WIDOWER.

A settlement by a widower in favour of his children by a former marriage, made by him when about to re-marry is held to be voluntary (*In re Cameron and Wells*, 37 Ch. D. 32). See "Marriage Consideration."

WIFE.

1. Gift by testator to "my wife A."

A. takes, although, since the date of the will, she may have procured a divorce on the ground of nullity (*In re Boddington*; *Boddington* v. *Clairat*, 22 Ch. D. 597, 25 Ch. D. 685).

2. Gift to the testator's wife (since the Wills Act).

The person calling herself his wife at the date of the will, will take; for a second marriage, would revoke the will; but, *primâ facie*, "wife" means "lawful wife" (*Pratt* v. *Matthew*, 22 B. 328; *Davenport's Trusts*, 1 Sm. & G. 126).

3. Gift to the wife of A.

If A. has a wife living at the date of the will, the gift, *primâ facie*, goes to her (*Boreham* v. *Bignall*, 8 Ha. 131).

4. A gift to husband and wife and a third person, see "Tenancy by Entireties."

(*a*) Dower may be excluded by a disposition by the husband in his lifetime or by will (Dower Act, 1833, ss. 4, 5); by a declaration barring dower contained in a deed or will after the Act (ss. 6, 7); by a devise of real estate to the widow (s. 9) (*Re Thomas*, 34 Ch. D. 166).

WIFE—*continued.*

5. Gift to divorced wife (see *Bullmore* v. *Wynter*, 22 Ch. D. 619; *In re Morrieson*; *Hitchins* v. *Morrieson*, 40 Ch. D. 30).
6. The wife of testator does not take under a gift (1) to his "relations" (*Davies* v. *Baily*, 1 Ves. Sen. 48); (2) to his "next-of-kin" (*Nicholls* v. *Savage*, cited in *Bailey* v. *Wright*, 18 Ves. 52); (3) or to his "next-of-kin according to the Statute of Distributions" (*Cholmondeley* v. *Lord Ashburton*, 6 Beav. 86).

WILD'S CASE, RULE IN. See "Rule in Wild's Case."

WILL.

1. *Evidence of.*

   Executors are now competent to give evidence concerning will (1 Vict. c. 26, s. 17); a will thirty years old produced from proper custody proves itself—the thirty years being reckoned from the date of the will and not from the death of testator. There is no limitation of time as to calling a will in question.
2. *Will of realty.*

   A will limited to the disposition of REALTY formerly could not be proved, notwithstanding that such realty was given to the executors upon trust for conversion (*Barden, In the goods of*, L. R. 1 P. & D. 325); but the later cases appear to have settled the law in favour of the executor's right to prove (*Browning* v. *Pike*, 7 P. D. 61). See "Land Transfer Act, 1897."
3. The will alone determines what shall be a "legacy," and any secret trust outside the will does not change the "legatee" (*Cullen* v. *Attorney-General*, L. R. 1 Eng. & Ir. H. L. App. 190).
4. "Competent to dispose by WILL of a continuing interest" (s. 21 of 16 & 17 Vict. c. 51) has reference to the *extent* of a successor's interest, not to his *capacity* to make a will (*Attorney-General* v. *Hallett*, 2 Hurl. & N. 368).
5. *Deposit of wills.*

   One or more safe and convenient depository or depositories shall be provided, under the control and direction of the Court of Probate for all such wills of living persons as shall be deposited therein for safe custody; and all persons may deposit their wills in such depository upon payment of such fees and under such regulations as the judge shall from time to time by any order direct (Court of Probate Act, 1857, s. 91).
6. Wills made abroad by British subjects dying after Aug. 6, 1861 (24 & 25 Vict. c. 114; The Wills Act, 1861).

   S. 1 enacts that every will and other testamentary instrument made out of the United Kingdom by a British subject (whatever may be the domicile of such a person at the time of making the same, or at the time of his or her death) shall, as regards personal estate, be held to be well executed for the purpose of being admitted in England and Ireland to probate, and in Scotland to confirmation, if the same be according to the forms required, either by the law of the place where the same was made, or by the law of the place where such person was domiciled when the same was made, or by the laws then in force in that part of Her Majesty's dominions where he had his domicile of origin (*a*).

(*a*) A will executed in France in English form by a Frenchman, naturalized in England, but who had retained his French domicile, was admitted to probate here in deference to the French law which legalizes wills thus made (*In the Goods of Lacroix*, 2 P. D. 94).

A., an English subject, residing in the Congo Free State, made a will in holograph

WILL—*continued.*

S. 2 enacts that every will and other testamentary instrument made within the United Kingdom by any British subject (whatever may be the domicile of such person at the time of making the same, or at the time of his or her death) shall, as regards personal estate, be held to be well executed, and shall be admitted in England and Ireland to probate, and in Scotland to confirmation, if the same be executed according to the forms required by the laws for the time being in force in that part of the United Kingdom where the same is made (*a*).

S. 3 enacts that no will or other testamentary instrument shall be held to be revoked or to have become invalid, nor shall the construction thereof be altered by reason of any subsequent change of domicile of the person making the same (*b*).

S. 4 enacts that nothing in this Act contained shall invalidate any will or testamentary instrument, as regards personal estate, which would have been valid if this Act had not been passed, except as such will or other testamentary instrument may be revoked or altered by any subsequent will or testamentary instrument made valid by this Act.

S. 5 enacts that this Act shall only extend to wills and other testamentary instruments made by persons who die after the passing of this Act (Aug. 6, 1861).

WILLS ACT (1 Vict. c. 26).

S. 3. All property may be disposed of by will, comprising customary freeholds and copyholds without surrender, and before admittance, and also such of them as cannot now be devised; estates *pur autre vie;* contingent interests; rights of entry, and property acquired after execution of will (*c*).

S. 6. If no disposition by will shall be made of any estate *pur autre vie* of a freehold nature, the same shall be chargeable in the hands of the heir, if it shall come to him by reason of special occupancy, as assets by descent, as in the case of freehold land in fee simple; and in case there shall be no special occupant of any estate *pur autre vie*, whether freehold or customary freehold, etc., and whether a corporeal or incorporeal hereditament, it shall go to the executor or administrator of the party that had the estate thereof by virtue of the grant; and if the same shall come to the executor or administrator, either by reason of a special occupancy or by virtue of this Act, it shall be

unattested form in that State. *Held*, that such a will was good as "made according to the forms required by the law of the place where the same was made," because in fact the Courts of the Congo Free State would have upheld the will.

If no particular form is prescribed by the *lex loci*, any form allowed by it is sufficient to satisfy section 1 (*Stokes* v. *Stokes*, 78 L. T. 50).

However, notwithstanding the provisions of this Act and of the Naturalization Act of 1870, a will executed abroad in the English form by a foreigner is invalid (*In the Goods of Von Buseck*, 6 P. D. 211; *Bloxam* v. *Favre*, 8 P. D. 101). In the latter case an English woman (and a British subject) subsequently acquired the foreign domicile of her husband, and retained that domicile after his death. Her will, in English form, was held to be invalid.

(*a*) A., a naturalized British subject, made his will (while domiciled here) in English form. He was domiciled abroad at the time of his death. His will was admitted to probate (*In the Goods of Gally*, 1 P. D. 438; 45 L. J. 107).

(*b*) A. (domiciled abroad) made a will and subsequently married abroad. At his death he was domiciled here. *Held*, that the will was not revoked by his subsequent change of domicile, and that it was entitled to probate in England (*In the Goods of Reid*, L. R. 1 P & D. 74).

(*c*) Repealed by Statute Law Revision Act, 1874.

WILLS ACT—*continued.*

assets in his hands, and shall go and be applied and distributed in the same manner as the personal estate of the testator or intestate.

S. 7. No will of a person under age to be valid.

S. 8. Nor of a *feme covert*, except such as might now be made.

S. 9. Every will shall be in writing, and signed by the testator in the presence of two witnesses at one time.

S. 10. Appointments by will to be executed like other wills, and to be valid, although other required solemnities are not observed.

S. 11. The wills of soldiers (in actual military service) and mariners (being at sea) excepted.

S. 12. Act not to affect certain provisions of 11 Geo. 4 & 1 Will. 4, c. 20, with respect to wills of petty officers and seamen and marines (*a*).

S. 13. Publication not to be requisite.

S. 14. Will not to be void on account of incompetency of attesting witness.

S. 15. Gifts to (or to the wife or husband of) an attesting witness to be void.

S. 16. Creditor attesting to be admitted a witness to prove execution or validity or invalidity of will.

S. 17. Executor to be admitted a witness.

S. 18. Wills to be revoked by marriage.

S. 19. No will to be revoked by presumption.

S. 20. No will to be revoked but by another will or codicil, or by a writing executed like a will, or by destruction.

S. 21. No alteration in will shall have any effect unless executed as a will.

S. 22. No will revoked to be revived otherwise than by re-execution or a codicil to revive it.

S. 23. A devise not to be rendered inoperative by any subsequent conveyance or act.

S. 24. A will shall be construed to speak from the death of the testator.

S. 25. A residuary devise shall include estates comprised in lapsed and void devises.

S. 26. A general devise of the testator's lands shall include copyhold and leasehold as well as freehold lands.

S. 27. A general gift shall include estates over which the testator has a general power of appointment.

S. 28. A devise without any words of limitation shall be construed to pass the fee.

S. 29. The words "die without issue" or "die without leaving issue" shall be construed to mean die without issue living at the death.

S. 30. No devise to trustees or executors, except for a term or a presentation to a church, shall pass a chattel interest.

S. 31. Trustees under an unlimited devise, where the trust may endure beyond the life of a person beneficially entitled for life, to take the fee.

S. 32. Devises of estates tail shall not lapse.

S. 33. Gifts to children or other issue who leave issue living at the testator's death shall not lapse.

S. 34. Act not to extend to wills made before 1838, nor to estates *pur autre vie* of persons who die before 1838.

S. 35. Act not to extend to Scotland.

WITNESS TO A WILL, GIFTS TO.

1. By s. 15 of the Wills Act, where A. is an attesting witness, a gift to A., or to the husband or wife of A., is VOID, and this does not appear to be affected by the Married Woman's Property Act, 1882.

(*a*) Repealed by 28 & 29 Vict. c. 112.

WITNESS TO A WILL, GIFTS TO—*continued.*

The subsequent marriage of A. to a devisee does not avoid the devise (*Thorpe* v. *Bestwick*, 6 Q. B. D. 311).

2. A gift by will to the attesting witness of a codicil is good; and, *vice versâ*, where a will attested by a legatee is afterwards republished in a codicil attested by other witnesses, the gift to the legatee is made good (*Gurney* v. *Gurney*, 3 Dr. 208; *Anderson* v. *Anderson*, 13 Eq. 381).

A testator by his will gave bequests to his employés; one of the employés had attested the will, and also two codicils that confirmed the will; another employé had attested the codicils but not the will.

Held, that the former employé could not take the gift, but that the latter was not incapacitated from taking under the will (*In re Marcus, Marcus* v. *Marcus*, 57 L. T. 399).

The interest must be a **beneficial** interest to the witness to make the bequest void; therefore a gift to an attesting witness as trustee is not void (*Creswell* v. *Creswell*, 6 Eq. 69).

3. A testator appointed A. his executor, and made no gift of residue. A.'s wife attested the will. There were no next-of-kin, and therefore the executor would take the undisposed-of residue (*Roose* v. *Chalk*, 28 W. R. 975), but in view of the fact that his wife attested the will it was held that A. could not take (*Attorney-General* v. *Gregory*; *Re Divers*, 34 Sol. Jour. 432).

4. Gift of personalty to A. (the widow) for life and on her death a share to B. (a married daughter) and her children exclusively, free from the control of her husband. B.'s husband attested the will. The gift to B. held void, but the gift to the children held to be valid and accelerated (*Jull* v. *Jacobs*, 3 Ch. D. 703; *In re Clark, Clark* v. *Randall*, 31 Ch. D. 72). A legacy, however, to an attesting witness to a will or codicil of **personalty** made before Jan. 1, 1838, is good: not so, however, in a will or codicil of **realty** (*Brett* v. *Brett*, 3 Add. 210).

5. Where the execution of the will was attested by two marksmen, and signed also by two other persons as witnesses, these latter were deemed to be themselves attesting witnesses (*Wigan* v. *Rowland*, 11 Ha. 157).

6. A residuary legatee or legatee whose name appears as a witness to a will, even if an extra and unnecessary witness forfeits his legacy, and therefore forfeits his right to a grant of administration (will) in his character of legatee; but where a will has been executed in the presence of A. and B. (witnesses), and in addition to their signature the signature of a legatee (C.) appears at the foot of the will, the Court will, upon satisfaction being given to explain that C.'s signature was not written to attest the deceased's signature, order it to be omitted from the probate (*In bonis Sharman*, 1 P. & D. 661; *Randfield* v. *Randfield*, 8 H. L. C. 225, 228 note (*c*)).

7. Where a solicitor-trustee attests a will, see "Solicitor."

8. A creditor may attest a will notwithstanding a charge made by testator for the payment of his debt (s. 16 of Wills Act).

WOLVERTON CASE.

A. (second Lord W.) bequeathed certain shares upon trust to pay B. (his nephew), heir presumptive to the title, an annuity of £15,000 and to accumulate the surplus income for his benefit until 1892, and he bequeathed his residuary estate to W. (his wife) for life and after her death to B. if then living, but, if dead, to the person who would then be testator's right heir at common law.

A. died in 1887, and was succeeded by B. as third baron, who died during the life

WOLVERTON CASE—*continued.*

of W., in July, 1888, without issue. B. was succeeded by his brother C. (the defendant), as fourth baron, who was not then the testator's right heir at common law. In Dec., 1888, a deed of arrangement was entered into between W. and C., by which W. assigned her interest in the shares, and H. (the heir) and C. their interests under the will, to trustees upon trust (1) to pay an annuity of £15,000 during W.'s life to C., and (2) after W.'s death to continue to pay the said annuity of £15,000 to the person entitled for the time being to the title. W. died in 1894, and the Crown claimed Succession Duty in respect of the annuity under clause (2) of the deed. *Held* (affirming the judgment of the Queen's Bench Division), that C. became entitled to a new and different annuity on the death of W., and that a succession had been conferred upon him within s. 2 of the Succession Duty Act, 1853; that there had not been an alienation not conferring a new succession within the meaning of s. 15 of the Act; that there was not a "contract for valuable consideration" within the meaning of s. 17 of the Act; and that Succession Duty was therefore payable (*Attorney-General* v. *Baron Wolverton* (1897), 1 Q. B. 231; reversed by the House of Lords on appeal, July, 1898).

Dictum of Lord Herschell (79 L. T. 62, 63). 57 L. T. 803 sq; [1898] A.C. 535; 47 W.R. 97; 62 J.P.

"The only case which affords any support to the idea that a new succession can take the place of an old one is *Re Cooper and Allen* (35 L. T. Rep. 890; 4 Ch. Div. 802) decided by Jessel, M.R. In that case A. and B., tenant-for-life and remainderman, conveyed their estates for money to C. in fee. C. died, having devised to D. in fee, D. paid duty on his succession from C. It was held that no more duty would be payable on the death of A., the tenant-for-life. It must be borne in mind that the case related to real estate, and that it was a special one, inasmuch as C., having taken a conveyance from the tenant-for-life, came at once into possession of the land and the income and profits thereof, in respect of which a succession had been created. Jessel, M.R., was of opinion that the conveyance to C. did not create a new succession, and that if he had remained owner until the death of the tenant-for-life the duty payable on the death of the tenant-for-life by the remainderman would have been payable by C., but that inasmuch as a new succession was created by the devise to D. and the death of C., the only duty payable was on that new succession. That new succession arose from a new disposition making the succession to property dependent on a new death, and it related to real estate; the case is, therefore, quite distinguishable from the present. But there are observations of Jessel, M.R., which have a bearing on the present case. I confess that I find a difficulty in following some of the reasoning of the learned judge. He considered that because D. succeeded on the death of C., and that was a new succession, duty could only be payable on that succession, and the duty which attached by reason of the original disposition was no longer payable. Why, he asks, should a successor who is in possession of property pay two duties? The Crown has, he says, by the merger got the benefit of reducing the estate once more to the fee simple on which there is a succession and a successor coming in pays the duty. Further on there occurs the following passage: 'I think it is very difficult to give any meaning to the exception from s. 15 of alienations conferring new successions, unless it has the meaning which I attribute to it, because if the alienation does not confer a new succession, duty is to be paid at the same rate and time as on the original succession, that is, you are to wait for the payment. If it confers a new succession, then of course you will get payment on whichever succession comes first.' Again, in

WOLVERTON CASE—*continued.*

discussing the effect of s. 14, which applies only to personalty, the learned judge says that it would be singular if in the case of realty more than one duty was payable in case of devolution on death during the lifetime of the tenant-for-life 'because the Act was intended to assimilate the duty upon personalty and realty.' And he adds further on: 'In the case of succession to real estate, the object of the Act is to let the last succession prevail; but as regards personal estate, it is enacted that the highest duty shall be paid.' I cannot see how the reasoning of the learned judge establishes that in the case before him there could be only one Succession Duty payable, and that in respect of the new succession. The merger of which the learned judge speaks did not arise by virtue of C.'s disposition, for the fee simple was vested in C. during his lifetime, just as much as in D. after his death. It arose from the fact of his taking a conveyance from the tenant-for-life as well as from the person entitled to the succession. He was thereupon entitled to the estate in immediate possession. But the possession to which he then became entitled, and his right to the income and profits of the land, was not derived from the conveyance to him of B.'s succession, but solely from the fact that he was the owner of A.'s life estate. If he had purchased this only he would have been equally entitled to possession of the land and to the income and profits thereof. If he had only purchased the succession he would at that time and down to his death have been entitled to neither. The devise by C. to D. created a succession in respect of property which was not at that time the subject of any succession, namely, the estate during the life of A. I think, with all respect, that Jessel, M.R., overlooked these facts. When D. came into possession of the land by reason of C.'s devise, he undoubtedly became entitled in possession to a succession, and duty became then payable in respect of it, though the original succession had not then become in the language of s. 44 'an interest in possession.' Duty would equally have been payable if C. had never acquired any title to the remainder in respect of which a succession had previously been conferred, and no title thereto had passed to D. It is not necessary to determine what duty or duties became payable by D. Nor is it necessary to decide whether, in the case of real estate, the object of the Act is to let the last succession prevail. Such a conclusion cannot, however, in my opinion, be deduced from s. 15, which only prescribes what duty is to be paid where a new succession has not been conferred. The argument derived by the learned judge from a consideration of the provisions of s. 14 in connection with s. 15 is, in my opinion, not a sound one. It is not correct to say that the Succession Duty Act was intended to assimilate the duty upon personalty and realty. Even in the view adopted by the learned judge the assimilation was not complete, for, whilst in the case of personal estate, if there were several successors by death to the interest of the original successor before it fell into possession the highest rate of duty is imposed, which if every successor had been subject to duty would have been payable by any one of them, in the case of realty the rate was said to be determined by the last succession, and might therefore be the lowest instead of the highest. But in truth, so far from assimilating realty and personalty for purposes of the duty, the Act created a fundamental distinction between them, and that to the advantage of realty. For whereas, in the case of personalty, the duty was charged at the prescribed rate upon the capital value of the property succeeded to, in the case of realty the charge was to be assessed only on the basis of succession to a life interest. The provision for assessment contained in s. 21 affords a reason for the restriction of s. 14 to

WOLVERTON CASE—*continued.*

successions to personalty. I proceed now to examine somewhat more closely the language of s. 15. The latter part of that section provides that where any succession shall, before the successor shall have become entitled thereto (*i.e.* to the succession already conferred) in possession, have become vested by alienation or by any title not conferring a new succession in any other person, then the duty payable in respect thereof shall be paid at the same rate and time as the same would have been payable if no such alienation had been made or derivative title created. As I have already stated, a part of the succession to which the co-heiresses were entitled became vested by alienation in the appellant. The case therefore seems to come within the very words of s. 15. For I can see no ground for a distinction between the transfer by alienation of the right to receive the whole of the personalty which is the subject of the succession or a part of it. It was argued on behalf of the Crown that the word 'alienation' must be confined to alienation for valuable consideration; that the words 'not conferring a new succession' qualified the word 'alienation,' as well as the words which immediately follow it, and that every gratuitous alienation must create a new succession substituted for the one from which it was derived. I have already given reasons for thinking the last of these propositions ill founded. If the word 'alienation' was only intended to apply to cases in which it was in respect of a money consideration, why were no words to that effect inserted? I think that there is no warrant for putting any limitation upon the word which is not found in the terms of the section. As in my opinion no new succession was created in the money to which the appellant has become entitled, it is immaterial whether the words 'not conferring a new succession' do or do not qualify the word 'alienation.' But I think it right to state that, in my opinion, they do not, and the fact that they do not strengthens the arguments which I have adduced as to the scheme of the legislation. It is certainly not construing the words 'by alienation or by any title not conferring a new succession,' according to their grammatical meaning to refer the words 'not conferring a new succession' to 'alienation' as well as to 'by any title.' And if I am right in thinking that mere alienation of an existing succession does not of itself create a new succession, then the section may be construed according to its grammar, and is drawn in the manner one would have expected. It is true that Jessel, M.R., in the case already referred to, expressed the opinion that the words 'not conferring a new succession' apply to the word 'alienation' as well as to the words 'any title,' though he confessed that in that view the grammar was not perfect or beyond criticism. The reason he gave was that it would be very difficult to say what title there could be conferring a new succession if not an alienation. I do not think the reason a sound one. A succession might, for example, before it fell into possession have devolved by death upon another person or persons so as to create a new succession. Such person or persons are termed in s. 14 'other successor or successors.' It was necessary to insert after the words 'by any title' the words 'not conferring a new succession,' otherwise there would have been a conflict as regards personalty between ss. 14 and 15. On the other hand, a succession might by operation of law become vested in some other person, as, for example, an assignee in bankruptcy, which would be a title not creating a new succession. But I can see nothing either in the terms of the section or in the reason of the thing to suggest that an alienation by instrument *inter vivos* which merely transferred the interest of the successor or some part of it to some other person, would create a new succession. In such a case the same property

WOLVERTON CASE—*continued.*

passes into possession on the same death, and, though by a transaction *inter vivos* another person is substituted for the original successor, I do not think it can reasonably be said that 'a new succession' was thereby conferred."

WOOD CASE (1897), 2 Q. B. 102; 76 L. T. 654.

A. by will settled a fund upon

B. (wife of A., *ob.* March, 1875), **for life,** remainder [subject to certain advances to be made on their marriage, to three of the daughters],

Equally among five daughters, and in case any predeceased B., without issue, her share to accrue equally among the surviving daughters.

X., one of the daughters, died March 26, 1869.

Y., another daughter, died Jan. 6, 1877.

Z., another daughter, **on her marriage settled** her expectant interest in the fund to trustees upon trust to

Z. for her sole and separate use (during the joint lives of herself and her husband, H.), and on the death of either to the

Survivor for life, and in events which happened [failure of issue and prior death of H. in 1895] to

Z. her executors, administrators, and assigns.

Estate Duty was claimed by the Commissioners of Inland Revenue on the death of H. upon the *corpus* of the fund, less the value of Z.'s life interest.

It was held that the property was not to be deemed to pass on the death of H.

"By s. 5 (2) and (3) (*a*) if Estate Duty had been paid on settled property it was not to be payable again until the death of some person competent to dispose of the property, and in cases **where an interest of a person failed before it became an interest in possession** property should not be deemed to pass on his death, if subsequent limitations, one or more it might be, under the settlement continued to subsist. At the death of H. subsequent limitations did continue to exist notwithstanding the fact that Z. thereupon became absolutely entitled to the property, and could have demanded a transfer of it from the trustees. The word 'subsist' properly described any estate created by the settlement which had not come to an end. It was none the less a limitation because there was no estate beyond it; in other words, the limitations under the settlement continued until the death of a person who was at the time of death during the continuance of the settlement competent to dispose of such property. S. 5 (3) prevented either Settlement Estate Duty or Estate Duty becoming payable. The 14th Section of the late

(*a*) If Estate Duty has already been paid in respect of any settled property since the date of the settlement, the Estate Duty shall not, nor shall any of the duties mentioned in the fifth paragraph of the First Schedule to this Act, be payable in respect thereof, until the death of a person who was at the time of his death or had been at any time during the continuance of the settlement competent to dispose of such property (s. 5 (2) of Finance Act, 1894).

In the case of settled property, where the interest of any person under the settlement fails or determines by reason of his death before it becomes an interest in possession, and subsequent limitations under the settlement continue to subsist, the property shall not be deemed to pass on his death (s. 5 (3)).

"I think that 'subsist' properly describes any estate created by the settlement which has not come to an end. I do not think that such an estate is the less a limitation because there is no estate limited beyond it—in other words, I think that limitations under the settlement continue until the death of a person who was, at the time of his death during the continuance of the settlement, competent to dispose of such property," *per* Vaughan Williams, J., in this case.

WOOD CASE—*continued.*

Act of 1896 did not affect this construction, nor did the case of *The Attorney-General* v. *Robertson* (1893) (1 Q. B. 293), which was a case under the Succession Duty Act," *per* Vaughan Williams, J.

Y.

YOUNGER SONS.

Following the jointure term in a strict settlement comes the portions term for securing a provision for the younger children of the marriage. The term "*younger children*" is generally defined to be the children of the intended marriage "other than an eldest or an only son, for the time being entitled, under the settlement, to an estate tail in possession, or in remainder expectant on the death of the tenant-for-life."

Where an eldest son dies without issue before the period of distribution, the second son will then become the eldest son, and as he then gets the settled estates, he will be excluded from a share in the portions (*Bayley's Settlement*, 9 Eq. 491; *Macoubrey* v. *Jones*, 2 K. & J. 684); not so excluded, however, where he is prevented from taking the estate by reason of the eldest son having before his death executed a disentailing deed even though he may take the estate under a resettlement (*Macoubrey* v. *Jones*, *supra*). Where an eldest son dies before his estate tail falls into possession, without leaving inheritable issue, and without having disentailed, his representatives are entitled to take a share in the portions, whether the exclusion is of the eldest son for the time being or not (*Ellison* v. *Thomas*, 2 Dr. & Sim. 111).

As regards a settled fund, the period of distribution and not that of vesting will be the time to ascertain who takes under a description of a "younger child," where the settlement is silent on the subject.

For example, in a bequest to A. for life, remainder to his children, except an eldest son, the period of distribution and not the death of the testator was held to be the period for ascertaining who was the eldest son (*Matthews* v. *Paul*, 3 Sw. 328).

APPENDIX.

TABLE I.

THE VALUES OF AN ANNUITY OF £100 PER ANNUM HELD ON A SINGLE LIFE.

Years of Age.	Values. £	s.	d.	Years of Age.	Values. £	s.	d.
Birth	1892	8	6	48	1300	9	6
1	1906	13	0	49	1271	19	6
2	1919	2	0	50	1242	19	6
3	1926	8	0	51	1213	17	0
4	1928	16	0	52	1185	14	0
5	1926	19	6	53	1157	17	6
6	1921	12	0	54	1130	13	0
7	1913	4	6	55	1103	18	0
8	1902	16	6	56	1077	10	0
9	1890	19	6	57	1051	10	0
10	1878	3	0	58	1025	10	0
11	1864	7	0	59	999	1	0
12	1849	12	0	60	972	1	0
13	1833	18	6	61	943	15	6
14	1817	7	6	62	914	2	0
15	1800	8	6	63	883	6	0
16	1783	13	0	64	852	9	0
17	1767	16	0	65	821	12	6
18	1753	5	6	66	790	15	0
19	1740	11	0	67	761	19	0
20	1729	9	6	68	733	8	6
21	1713	17	0	69	705	4	0
22	1783	1	0	70	677	9	0
23	1706	16	6	71	650	8	0
24	1700	11	6	72	623	19	6
25	1694	0	0	73	597	7	6
26	1686	14	6	74	569	13	0
27	1677	5	6	75	541	0	6
28	1667	1	0	76	511	9	6
29	1656	1	0	77	477	17	0
30	1644	7	6	78	444	9	6
31	1632	0	0	79	412	9	6
32	1619	0	6	80	381	3	0
33	1605	4	0	81	350	14	6
34	1590	9	6	82	321	14	6
35	1574	17	6	83	292	10	0
36	1558	9	6	84	263	2	0
37	1541	10	6	85	234	18	6
38	1524	0	0	86	207	16	0
39	1506	1	6	87	184	11	6
40	1487	10	0	88	164	17	6
41	1468	4	0	89	148	7	0
42	1447	11	6	90	133	9	0
43	1426	2	0	91	122	16	0
44	1403	10	0	92	107	7	0
45	1379	14	6	93	93	3	0
46	1354	16	6	94	79	8	6
47	1328	2	6	95	64	11	0

For expanded form of Tables I., II., III., see Norman's "Death Duty Tables."

TABLE III. (a).

THE VALUES OF AN ANNUITY OF £100 PER ANNUM FOR ANY NUMBER OF YEARS NOT EXCEEDING 95.

Years of Age.	Values.			Years of Age.	Values.		
	£	s.	d.		£	s.	d.
1	96	3	0	49	2134	2	6
2	188	12	0	50	2148	4	0
3	277	10	0	51	2161	14	6
4	362	19	6	52	2174	15	0
5	445	3	6	53	2187	5	0
6	524	4	0	54	2199	5	6
7	600	4	0	55	2210	17	0
8	673	5	0	56	2221	19	6
9	743	10	6	57	2232	13	0
10	811	1	6	58	2242	19	0
11	876	0	6	59	2252	16	6
12	938	10	0	60	2262	6	6
13	998	11	0	61	2271	9	6
14	1056	6	0	62	2280	5	6
15	1111	16	6	63	2288	14	6
16	1165	4	6	64	2296	17	0
17	1216	11	0	65	2304	13	0
18	1265	18	6	66	2312	3	6
19	1313	7	6	67	2319	8	0
20	1359	0	6	68	2326	7	0
21	1402	18	0	69	2333	0	6
22	1445	2	0	70	2339	9	0
23	1485	13	6	71	2345	12	6
24	1524	13	6	72	2351	11	0
25	1562	4	0	73	2357	5	0
26	1598	5	6	74	2362	15	0
27	1632	19	0	75	2368	0	6
28	1666	6	0	76	2373	2	0
29	1698	7	0	77	2377	19	6
30	1729	4	0	78	2382	13	6
31	1758	16	6	79	2387	4	0
32	1787	7	0	80	2391	10	6
33	1814	15	0	81	2395	14	0
34	1841	2	0	82	2399	14	0
35	1866	9	0	83	2403	11	6
36	1890	16	6	84	2407	5	6
37	1914	5	0	85	2410	17	0
38	1936	15	6	86	2414	5	6
39	1958	8	6	87	2417	11	6
40	1979	5	6	88	2420	14	6
41	1999	6	0	89	2423	15	6
42	2018	11	0	90	2426	14	6
43	2037	1	6	91	2429	10	6
44	2054	17	6	92	2432	5	0
45	2072	0	0	93	2434	17	0
46	2088	9	0	94	2437	7	0
47	2104	5	6	95	2439	15	6
48	2119	10	0				

(a) Table II. (the values of an annuity of £100 held on the joint continuance of two lives) is too long for insertion here. See Succession Duty Act (16 & 17 Vict. c. 51).

CUSTOMS AND INLAND REVENUE ACT, 1880. [43 VICT. c. 14.] A.D. 1880.

PART III.

Stamps.

Grant of duties on probates and letters of administration.

9. On and after the first day of April one thousand eight hundred and eighty, in lieu of the Stamp Duties now payable upon probates of wills and letters of administration in England and Ireland, and upon inventories to be exhibited and recorded in any Commissary Court in Scotland, there shall be charged and paid the duties specified in the Schedule of this Act: Provided, that an additional inventory to be so exhibited or recorded of any effects of a deceased person, where a former duly stamped inventory of the estate and effects of the same person has been exhibited and recorded prior to the first day of April one thousand eight hundred and eighty, shall be chargeable with the amount of Stamp Duty with which it would have been chargeable if this Act had not been passed.

Account to accompany affidavit on application for probate of letters of administration.

10. (1.) Together with the affidavit to be required and received from the person applying for a probate or letters of administration in England, in conformity with section thirty-eight of the Act passed in the fifty-fifth year of the reign of King George the Third, chapter one hundred and eighty-four, there shall be delivered an account of the particulars of the personal estate for or in respect of which the probate or letters of administration is or are to be granted, and of the estimated value of such particulars.

(2.) The account so delivered shall be transmitted to the Commissioners of Inland Revenue, together with the documents mentioned in section ninety-three of the Act passed in the twentieth and twenty-first years of Her Majesty's reign, chapter seventy-seven.

(3.) A like account shall be annexed to the affidavit to be required and received from the person applying for a probate or letters of administration in Ireland, in conformity with section one hundred and seventeen of the Act passed in the fifty-sixth year of the reign of King George the Third, chapter fifty-six, and such account shall be in lieu of, and in substitution for, the account annexed to the form of affidavit set forth in Part III. of the Schedule to the said Act.

(4.) Every account to be delivered in pursuance of this section shall be in accordance with such form as may be prescribed by the Commissioners of Her Majesty's Treasury.

Power to commute Legacy Duty or Succession Duty presumptively payable in certain cases.

11. Where any Legacy Duty or Succession Duty shall be presumptively payable in respect of any interest in expectancy upon the determination of a life or other temporary interest in possession in a legacy, or residue, or in personal property comprised in a succession, and the duty (if any) payable upon the life or other temporary interest shall have been fully paid and satisfied, it shall be lawful for the Commissioners of Inland Revenue, in their discretion, upon the application of the executor or trustee or other person who would be accountable for the duty in respect of such interest in expectancy, if it were then in possession, to commute the duty presumptively payable for a certain sum to be presently paid.

For assessing the amount which shall be so payable the Commissioners shall cause a present value to be set upon the presumptive duty, regard being had to any contingencies affecting the liability to such duty, and the interest of money involved in the calculation being reckoned at the rate for the time being allowed by the Commissioners in respect of duties paid in advance under the Succession Duty Act, 1853. 16 & 17 Vict. c. 51.

A.D. 1880.

Upon the receipt of the certain sum the Commissioners shall give a discharge for the duty accordingly.

Discharge of executor, etc., from claim to duty on distribution of fund.

12. When an executor, administrator, or trustee shall have given notice in writing to the Commissioners of Inland Revenue for any claim to Legacy Duty or Succession Duty in respect of any funds in his hands which he intends to distribute, and shall have delivered to the Commissioners all particulars which they may require in order to ascertain the existence and extent of any such claim, he shall be at liberty to distribute the fund amongst the parties entitled thereto, after satisfaction of any claims to duty made by the Commissioners, and shall be entitled to receive from them a certificate discharging him from his liability to any duty in respect of the fund.

Such certificate shall not in any way affect the liability of any person other than the person in whose favour it is expressed to be given.

Relief from Legacy Duty when whole personal estate is less than £100.

13. Where it appears upon an examination of the account rendered to the Commissioners of Inland Revenue that the value of the whole of the personal estate of any person dying after the passing of this Act does not amount to the sum of one hundred pounds, no legacy duty shall be charged in respect thereof or of any portion thereof.

A.D. 1881.

CUSTOMS AND INLAND REVENUE ACT, 1881. [44 Vict. c. 12.]

Part III.

Stamps.

As to Probate and Legacy Duties and Duties on Accounts.

Section.

26. Stamp Duties to be under the care and management of the Commissioners of Inland Revenue.
27. Grant of duties in respect of probate and letters of administration, and on inventories.
28. Power to deduct debts and funeral expenses where deceased died domiciled in the United Kingdom.
29. As to forms of affidavit.
30. Probate or letters of administration to bear a certificate in lieu of Stamp Duty.
31. Provision for return of duty overpaid.
32. Provision for payment of further duty.
33. Provisions as to obtaining probate, etc., where gross value of estate does not exceed three hundred pounds.
34. Provision as to inventories where gross value of estate does not exceed three hundred pounds.
35. Provision in case of subsequent discovery that the value of estate exceeded three hundred pounds.
36. Relief from Legacy Duty in cases under three hundred pounds.
37. Power to Commissioners to require explanations and proof in support of affidavit or inventory.
38. Grant of duties on accounts of certain property.
39. Delivery of accounts on oath.
40. Double duty payable in case of default.
41. Cesser of Legacy and Succession Duties at the rate of one per cent. in certain cases.
42. Charge of Legacy Duty on legacies not amounting to twenty pounds.
43. Power to Commissioners to accept composition for Legacy Duty under a will.

A.D. 1881.

Stamp Duties to be under the care and management of the Commissioners of Inland Revenue.

26. (1.) The Stamp Duties hereinafter imposed shall be under the care and management of the Commissioners of Inland Revenue, who by themselves and their officers shall have the same powers and authorities for the collection, recovery, and management thereof as are by law vested in them for the collection, recovery, and management of any Stamp Duties, and shall have all other powers and authorities requisite for carrying into effect the provisions of this Act in relation to such Stamp Duties.

(2.) Such Stamp Duties may be denoted by impressed or adhesive stamps, or partly by impressed stamps and partly by adhesive stamps, as the said Commissioners may think proper.

(3.) As respects the duties imposed on affidavits in substitution for the duties on probates or letters of administration, the several provisions now in force in relation to the last-mentioned duties shall, so far as the same are consistent with the provisions of this Act, be deemed to be applicable to the said duties hereby imposed, and in the application thereof a probate or letters of administration having thereon such a certificate as is hereinafter mentioned shall for all purposes be deemed to have been duly stamped in respect of the value stated in the certificate.

Grant of duties in respect of probate and letters of administration and on inventories.

27. The duties imposed by the Customs and Inland Revenue Act, 1880, upon probates of wills and letters of administration in England and Ireland shall not be payable upon probates or letters of administration granted on and after the first day of June one thousand eight hundred and eighty-one; and on and after that day in substitution for such duties and in lieu of the duties imposed by the said Act upon inventories in Scotland, there shall, save as is hereinafter expressly provided, be charged and paid on the affidavit to be required and received from the person applying for the probate or letters of administration in England or Ireland, or on the inventory to be exhibited and recorded in Scotland, the stamp duties hereinafter specified (that is to say):—

	Duty.
Where the estate and effects for or in respect of which the probate or letters of administration is or are to be granted, or whereof the inventory is to be exhibited and recorded, exclusively of what the deceased shall have been possessed of or entitled to as trustee, and not beneficially, shall be above the value of £100, and not above the value of £500	At the rate of one pound for every full sum of £50, and for any fractional part of £50 over any multiple of £50;
Where such estate and effects shall be above the value of £500, and not above the value of £1000	At the rate of one pound five shillings for every full sum of £50, and for any fractional part of £50 over any multiple of £50;
Where such estate and effects shall be above the value of £1000	At the rate of three pounds for every full sum of £100, and for any fractional part of £100 over any multiple of £100;

Provided that an additional inventory, to be exhibited or recorded in Scotland, of any effects of a deceased person, where a former inventory of the estate and effects of the same person has been exhibited and recorded prior to the first day of June one

A.D. 1881.

thousand eight hundred and eighty-one, shall be chargeable with the amount of Stamp Duty with which it would have been chargeable if this Act had not been passed.

Power to deduct debts and funeral expenses where deceased died domiciled in the United Kingdom.

28. On and after the first day of June one thousand eight hundred and eighty-one, in the case of a person dying domiciled in any part of the United Kingdom, it shall be lawful for the person applying for the probate or letters of administration in England or Ireland, or exhibiting the inventory in Scotland, to state in his affidavit the fact of such domicile, and to deliver therewith or annex thereto a schedule of the debts due from the deceased to persons resident in the United Kingdom, and the funeral expenses, and in that case, for the purpose of the charge of duty on the affidavit or inventory, the aggregate amount of the debts and funeral expenses appearing in the schedule shall be deducted from the value of the estate and effects as specified in the account delivered with or annexed to the affidavit, or whereof the inventory shall be exhibited.

Debts to be deducted under the power hereby given shall be debts due and owing from the deceased and payable by law out of any part of the estate and effects comprised in the affidavit or inventory, and are not to include voluntary debts expressed to be payable on the death of the deceased, or payable under any instrument which shall not have been *bonâ fide* delivered to the donee thereof three months before the death of the deceased, or debts in respect whereof any real estate may be primarily liable or a reimbursement may be capable of being claimed from any real estate of the deceased or from any other estate or person.

Funeral expenses to be deducted under the power hereby given shall include only such expenses as are allowable as reasonable funeral expenses according to law.

As to forms of affidavit.

29. The affidavit to be required or received from any person applying for probate or letters of administration in England or Ireland shall extend to the verification of the account of the estate and effects, or to the verification of such account and the schedule of debts and funeral expenses, as the case may be, and shall be in accordance with such form as may be prescribed by the Commissioners of Her Majesty's Treasury; and the Commissioners of Inland Revenue shall provide forms of affidavit stamped to denote the duties payable under this Act.

Probate or letters of administration to bear a certificate in lieu of Stamp Duty.

30. No probate or letters of administration shall be granted by the Probate, Divorce, and Admiralty Division of the High Court of Justice in England, or by the Probate and Matrimonial Division of the High Court of Justice in Ireland, unless the same bear a certificate in writing under the hand of the proper officer of the Court, showing that the affidavit for the Commissioners of Inland Revenue has been delivered, and that such affidavit, if liable to Stamp Duty, was duly stamped, and stating the amount of the gross value of the estate and effects as shown by the account.

Provision for return of duty overpaid.

31. If at any time after the grant of probate or letters of administration, and during the administration of the estate, the value mentioned in the certificate of the officer of the Court shall be found to exceed the true value of the personal estate and effects of the deceased, or if at any time within three years after the grant, or within such further period as the Commissioners of Inland Revenue may allow, it shall appear that no amount or an insufficient amount was deducted on account of debts and funeral expenses, it shall be lawful for the said Commissioners, upon proof of the facts to their satisfaction, to return the amount of Stamp Duty which shall have been overpaid, and to cause a certificate to be written by an authorized officer on the probate or letters of administration setting forth such true value, or, as the case may be, the amount, or corrected amount of deduction, and such certificate shall be substituted for, and have the same force and effect as, the certificate of the officer of the Court.

Provision for payment of further duty.

32. If at any time it shall be discovered that the personal estate and effects of the deceased were at the time of the grant of probate or letters of administration of greater value than the value mentioned in the certificate, or that any deduction for debts or funeral expenses was made erroneously, the person acting in the administration of such

A.D. 1881.

estate and effects shall, within six months after the discovery, deliver a further affidavit with an account to the Commissioners of Inland Revenue, duly stamped for the amount which, with the duty (if any) previously paid on an affidavit in respect of such estate and effects, shall be sufficient to cover the duty chargeable according to the true value thereof, and shall at the same time pay to the said Commissioners interest upon such amount at the rate of five pounds per centum per annum from the date of the grant, or from such subsequent date as the said Commissioners may in the circumstances think proper.

The Commissioners of Inland Revenue, upon the receipt of such affidavit duly stamped as aforesaid, shall cause a certificate to be written by an authorized officer on the probate or letters of administration setting forth the true value of the estate and effects as then ascertained, or, as the case may be, the corrected amount of deduction, and such certificate shall be substituted for, and have the same force and effect as, the certificate of the officer of the Court.

Provisions as to obtaining probate, etc., where gross value of estate does not exceed £300.

33. (1.) Where the whole personal estate and effects of any person dying on or after the first day of June one thousand eight hundred and eighty-one (inclusive of property by law made such personal estate and effects for the purpose of the charge of duty, and any personal estate and effects situate out of the United Kingdom), without any deduction for debts or funeral expenses, shall not exceed the value of three hundred pounds, it shall be lawful for the person intending to apply for probate or letters of administration in England or Ireland, to deliver to the proper officer of the Court or to any officer of Inland Revenue duly appointed for the purpose, a notice in writing in the prescribed form, setting forth the particulars of such estate and effects, and such further particulars as may be required to be stated therein, and to deposit with him the sum of fifteen shillings for fees of Court and expenses, and also, in case the estate and effects shall exceed the value of one hundred pounds, the further sum of thirty shillings for Stamp Duty.

(2.) If the officer has good reason to believe that the whole personal estate and effects of the deceased exceeds the value of three hundred pounds, he shall refuse to accept the notice and deposit until he is satisfied of the true value thereof.

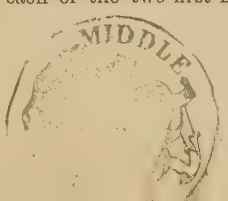
(3.) The principal registrars of the Probate, Divorce, and Admiralty Division, of the High Court of Justice in England, and of the Probate and Matrimonial Division of the High Court of Justice in Ireland, in communication with the Commissioners of Inland Revenue, shall prescribe the form of notice, and make such regulations as may be necessary with respect to the transmission of notices by officers of Inland Revenue, the steps to be taken for the preparation and filling up of forms and documents, and generally all matters which may be necessary, so as to authorize the grant of probate or letters of administration.

(4.) Officers of Inland Revenue are hereby empowered to administer all necessary oaths or affirmations, and in the case of letters of administration, to attest the bond and accept the same on behalf of the President or Judge of the Division.

(5.) Where the estate and effects shall exceed the value of one hundred pounds, the Stamp Duty payable on the affidavit for the Commissioners of Inland Revenue shall be the fixed duty of thirty shillings, and no more.

Provision as to inventories where gross value of estate does not exceed £300. 39 & 40 Vict. c. 24. 39 & 40 Vict. c. 70.

34. (1.) The Intestates, Widows, and Children (Scotland) Act, 1875, and the Small Testate Estate (Scotland) Act, 1876, as amended by the Sheriffs Court (Scotland) Act, 1876, shall be extended so as to apply to any case where the whole personal estate and effects of a person dying on or after the first day of June one thousand eight hundred and eighty-one, without any deduction for debts or funeral expenses, shall not exceed the value of three hundred pounds, whoever may be the applicant for representation, and wheresoever the deceased may have been domiciled at the time of death, and the fees payable under Schedule C of each of the two first-mentioned Acts shall not



A.D. 1881.

exceed the sum of fifteen shillings, inclusive of the fee of two shillings and sixpence, to be paid to the commissary clerk, or sheriff clerk.

(2.) In any such case where the estate and effects shall exceed the value of one hundred pounds, the Stamp Duty payable on the inventory shall be the fixed duty of thirty shillings, and no more.

Provision in case of subsequent discovery that the value of estate exceeded £300.

35. Where representation has been obtained in conformity with either of the two preceding sections, and it shall be at any time afterwards discovered that the whole personal estate and effects of the deceased were of a value exceeding three hundred pounds, then a sum equal to the Stamp Duty payable on an affidavit or inventory in respect of the true value of such estate and effects shall be a debt due to Her Majesty from the person acting in the administration of such estate and effects, and no allowance shall be made in respect of the sums deposited or paid by him, nor shall the relief afforded by the next succeeding section be claimed or allowed by reason of the deposit or payment of any sum.

Relief from Legacy Duty in cases under £300.

36. The payment of the sum of thirty shillings for the fixed duty on the affidavit or inventory in conformity with this Act shall be deemed to be in full satisfaction of any claim to Legacy Duty or Succession Duty in respect of the estate or effects to which such affidavit or inventory relates.

Power to commissioners to require explanations and proof in support of affidavit or inventory.

37. It shall be lawful for the Commissioners of Inland Revenue at any time and from time to time within three years after the grant of probate or letters of administration or recording of inventory, as they may think necessary, to require the person acting in the administration of the estate and effects of any deceased person, to furnish such explanations, and to produce such documentary or other evidence respecting the contents of, or particulars verified by, the affidavit or inventory as the case may seem to them to require.

Grant of duties on accounts of certain property.

38. (1.) Stamp Duties at the like rates as are by this Act charged on affidavits and inventories shall be charged and paid on accounts delivered of the personal or moveable property to be included therein according to the value thereof.

(2.) The personal or moveable property to be included in an account shall be property of the following descriptions, viz.:—

(*a*) Any property taken as a *donatio mortis causâ* made by any person dying on or after the first day of June one thousand eight hundred and eighty-one, or taken under a voluntary disposition, made by any person so dying, purporting to operate as an immediate gift *inter vivos* whether by way of transfer, delivery, declaration of trust or otherwise, which shall not have been *bonâ fide* made three months before the death of the deceased.

(*b*) Any property which a person dying on or after such day having been absolutely entitled thereto, has voluntarily caused or may voluntarily cause to be transferred to or vested in himself and any other person jointly whether by disposition or otherwise, so that the beneficial interest therein or in some part thereof passes or accrues by survivorship on his death to such other person.

(*c*) Any property passing under any past or future voluntary settlement made by any person dying on or after such day by deed or any other instrument not taking effect as a will, whereby an interest in such property for life or any other period determinable by reference to death is reserved either expressly or by implication to the settlor, or whereby the settlor may have reserved to himself the right, by the exercise of any power, to restore to himself, or to reclaim the absolute interest in such property.

(3.) Where an account delivered duly stamped comprises property passing under a voluntary settlement, and, upon the production of the settlement, it shall appear that the Stamp Duty of five shillings per centum has been paid thereon according to the

amount or value of the property so passing, or any part thereof, the amount of such Stamp Duty shall be returned to the person delivering the account. A.D. 1881.

Delivery of accounts on oath.

39. Every person who as beneficiary, trustee, or otherwise, acquires possession, or assumes the management, of any personal or moveable property of a description to be included in an account according to the preceding section shall, upon retaining the same for his own use, or distributing or disposing thereof, and in any case within six calendar months after the death of the deceased deliver to the Commissioners of Inland Revenue a full and true account, verified by oath, of such property duly stamped as required by this Act. Any officer authorized by the Commissioners for the purpose may administer the oath.

Double duty payable in case of default.

40. If any person who ought to obtain probate or letters of administration or deliver a further affidavit or to exhibit an inventory or who is required to deliver such account as aforesaid shall neglect to do so within the period prescribed by law for the purpose, he shall be liable to pay to Her Majesty double the amount of duty chargeable, and the same shall be a debt due from him to the Crown, and be recoverable by any of the ways or means now in force for the recovery of Probate, Legacy, or Succession Duties.

Cesser of Legacy and Succession Duties at the rate of 1 per cent. in certain cases.

41. In respect of any legacy, residue, or share of residue payable out of, or consisting of any estate or effects according to the value whereof duty shall have been paid on the affidavit or inventory or account, in conformity with this Act, the duty at the rate of one pound per centum imposed by the Act of the fifty-fifth year of King George the Third, chapter one hundred and eighty-four, shall not be payable;

And in respect of any succession to property according to the value whereof duty shall have been paid on the affidavit or inventory or account in conformity with this Act, the duty at the rate of one pound per centum imposed by the Succession Duty Act, 1853, shall not be payable. 16 & 17 Vict. c. 51.

Charge of Legacy Duty on legacies not amounting to £20.

42. Subject to the relief from Legacy Duty given by section thirteen of the Customs and Inland Revenue Act, 1880, every pecuniary legacy or residue or share of residue under the will or the intestacy of a person dying on or after the first day of June one thousand eight hundred and eighty-one, although not of an amount or value of twenty pounds, shall be chargeable to the duties imposed by the said Act of the fifty-fifth year of King George the Third, chapter one hundred and eighty-four, as modified by this Act.

Power to commissioners to accept composition for Legacy Duty under a will.

43. It shall be lawful for the Commissioners of Inland Revenue, upon the application of the person acting in the execution of the will of any deceased person, and upon the delivery to them of an account showing the amount of the estate and effects in respect whereof legacy duty is payable, together with the names or description of class of the persons entitled thereto and every part thereof, in possession or expectancy, and their degrees of consanguinity to the testator, to assess the duty upon the amount shown by the said account at such a sum by way of composition as, having regard to the circumstances, shall appear to be proper, and to accept payment of the duty so assessed in full discharge of all claims for Legacy Duty under such will.

If the Commissioners are of opinion that an application should receive the assent of any person, they shall refuse to entertain the application until such assent shall have been given.

A.D. 1888.

CUSTOMS AND INLAND REVENUE ACT, 1888. [51 VICT. c. 8.]

PART IV.

Succession Duty.

Charge of additional Succession Duty.

21. Charge of additional Succession Duty.
22. Duty on succession to real property chargeable as annuity, how to be paid.

16 & 17 Vict. c 51.

21. (1.) In addition to the duties chargeable in respect of successions under section ten of the Succession Duty Act, 1853, there shall be levied and paid to Her Majesty in respect of every succession therein referred to, upon the death of any person dying on or after the first day of July one thousand eight hundred and eighty-eight, according to the value thereof, the following duties (that is to say):—

Where the successor shall be the lineal issue or lineal ancestor of the predecessor, a duty at the rate of ten shillings per centum upon the value of the interest of the successor;

In all other cases mentioned in such section, a duty at the rate of one pound ten shillings per centum upon the value of the interest of the successor.

Provided that additional duty under this Act shall not be payable upon the interest of a successor in leaseholds passing to him by will or devolution by law, or in property included in an account according to the value whereof duty is payable under the Customs and Inland Revenue Act, 1881.

44 & 45 Vict. c. 12.

(2.) The duties chargeable under the Acts now in force for charging duties on legacies and shares of the personal estates of deceased persons shall not be levied and paid under such Acts in respect of any legacy payable or having effect or being satisfied out of or charged or rendered a burden upon the real or heritable estate of any person dying on or after the first day of July one thousand eight hundred and eighty-eight, or any real or heritable estate, or the rents or profits thereof, which such person shall have had any right or power to charge, burden, or affect with the payment of money, or out of or upon any moneys to arise from the sale, mortgage, or other disposition of any such real or heritable estate, or any part thereof, but the duties under the Succession Duty Act, 1853, and the additional duties under this Act shall be levied and paid in respect of every such legacy (whether given by way of annuity or in any other form) as a succession to personal property.

Duty on succession to real property chargeable as annuity, how to be paid.

22. (1.) The duty chargeable on the interest of a successor in real property, considered as an annuity in conformity with section twenty-one of the Succession Duty Act, 1853, shall, where the successor has become entitled to his succession upon the death of any person dying on or after the first day of July one thousand eight hundred and eighty-eight, be paid as follows:—

(*a*) by eight equal half-yearly instalments, according to the provisions of the said section; or, at the option of the successor,

(*b*) by two equal moieties, whereof the first moiety shall be paid by four equal yearly instalments, the first of such instalments to be paid at the expiration of twelve months next after the successor shall have become entitled to the beneficial enjoyment of the real property in respect whereof the same shall be payable, and the three following instalments at yearly intervals to be computed from the day on which the first instalment shall have become payable; and the second moiety shall be paid on the day for payment of the last instalment of the first moiety, or, if not so paid, shall be payable by four equal yearly instalments, with interest at the rate of four pounds per centum per annum from such last-mentioned day on so much of the second

A.D. 1888.

moiety as shall for the time being remain unpaid, the first of such instalments, with the interest, to be paid at the expiration of twelve months from that day.

(2.) In the event of a successor availing himself of the option given to him by this section, he shall be entitled to tender the duty in advance, and receive discount thereon at such rate and subject to such regulations in all respects as the Commissioners of the Treasury may prescribe.

(3.) In the event of the successor availing himself of the option given to him by this section, and dying before all the duty with the interest (if any) shall have been fully paid, then the unpaid part of the duty with the interest (if any) shall—

(*a*) where the successor shall have been competent to dispose by will of a continuing interest in such property, be a continuing charge on such interest, in exoneration of his other property, and shall be payable by the owner for the time being of such interest; and

(*b*) where the successor shall not have been so competent, be a debt due to Her Majesty, and payable out of his estate, either in advance under the provision in this section in that behalf, or at the same time or times and in the same manner as the amount unpaid would have been payable by him if he had not died; provided that if the death of the successor shall have happened before the day for payment of the last instalment of the first moiety of duty, the debt shall be reduced by so much as would have ceased to be payable if the duty had been payable by eight half-yearly instalments under section twenty-one of the Succession Duty Act, 1853.

(4.) A successor entitled to his succession upon the death of a person dying before the first day of July one thousand eight hundred and eighty-eight shall have the option given by this section if no instalment of duty has become due from him, or if only one such instalment has become due from him, and has been paid before the first day of July one thousand eight hundred and eighty-eight.

CUSTOMS AND INLAND REVENUE ACT, 1889. [52 Vict. c. 7.]

A.D. 1889.

Part II.

Stamps.

Estate Duty.

5. Estate Duty on personal property passing by will or on intestacy.
6. Estate Duty on successions.
7. Duration of charge of Estate Duty.
8. Double duty or interest payable in case of default.
9. The duties to be Stamp Duties.

Amendments of Law as to Succession Duties and Duties on Accounts.

10. Amendments of the law as to Succession Duty.
11. Amendment of 44 & 45 Vict. c. 12, s. 38.

Limitation of Claims as to Succession Duty or Legacy Duty in certain Cases.

12. Purchasers and mortgagees exempted from liability to Succession Duty after a specified period.
13. Power to deposit copies of documents and liability to duty to cease after specified period.

A.D. 1889.

14. Liability to duty under documents admitted by probate to cease after a specified period.
15. As to notices under this part of the Act.

Estate Duty on personal property passing by will or on intestacy.

5. (1.) Where, in the case of any person applying for probate or letters of administration granted in England or Ireland on or after the first day of June one thousand eight hundred and eighty-nine, or in the case of any person exhibiting an inventory in Scotland on or after that day, the value of the estate and effects in respect whereof duty is charged on the affidavit or inventory by section twenty-seven of the Customs and Inland Revenue Act, 1881, exceeds ten thousand pounds, he shall together with such affidavit or inventory deliver a statement of the value of such estate and effects. The statement shall be transmitted with the affidavit or inventory to the Commissioners of Inland Revenue by the proper officer of the High Court of Justice in England or Ireland, or of the proper court in Scotland, and the certificate required under section thirty of the said Act shall extend to, and include the fact of the delivery of the statement.

(2.) Where the value of the personal or moveable property included in an Account delivered according to section thirty-eight of the Customs and Inland Revenue Act, 1881, on or after the first day of June one thousand eight hundred and eighty-nine, exceeds ten thousand pounds, the person delivering the Account shall also deliver together therewith a statement of the value of such property.

(3.) Where pursuant to the provisions of section thirty-two of the Customs and Inland Revenue Act, 1881, a further affidavit is required to be delivered by any person, and where any person intromitting with, or entering upon the possession or management of, any personal or moveable estate or effects in Scotland of any person dying is required by law to exhibit an additional inventory, the following provisions shall apply :

(*a*) If the value of the estate and effects in respect whereof duty was charged on the former affidavit or inventory under section twenty-seven of the Customs and Inland Revenue Act, 1881, exceeded ten thousand pounds, the person delivering the further affidavit or exhibiting the additional inventory shall deliver together therewith a statement of the value of the estate and effects included therein or of the increase of value of the estate and effects included in the former affidavit or inventory, as the case may be:

(*b*) If the value of the estate and effects in respect whereof duty has been charged under the Customs and Inland Revenue Act, 1881, did not exceed ten thousand pounds, and such value together with the value of the estate and effects included in the further affidavit or additional inventory delivered or exhibited or the increased value, as the case may be, exceeds ten thousand pounds, such person delivering the further affidavit or exhibiting the additional inventory shall deliver together therewith a statement of the value of the estate and effects included therein, and in the former affidavit or inventory, or of the value as increased of the estate and effects included in the former affidavit or inventory, as the case may be.

(4.) There shall be charged and paid on every statement to be delivered in conformity with this section a duty of one pound for every full sum of one hundred pounds, and for any fraction of one hundred pounds over any multiple of one hundred pounds of the value of the estate and effects or of the personal or moveable property, as the case may be.

(5.) The duties respectively imposed by this section are to be in addition to the Stamp Duties charged on the affidavit required from persons applying for probate or letters of administration in England or Ireland, and on the inventory exhibited and recorded in Scotland, and in addition to the Stamp Duties charged on such Accounts of

personal and moveable property as are specified in section thirty-eight of the Customs and Inland Revenue Act, 1881, as amended by this Act, but are not to be deemed "Probate Duties" within the meaning assigned to that expression by section twenty-one of the Local Government Act, 1888, or by section five of the Probate Duties (Scotland and Ireland) Act, 1888. A.D. 1889. 44 & 45 Vict. c. 12. 51 & 52 Vict. c. 41.

(6.) The provisions contained in section thirty-one of the Customs and Inland Revenue Act, 1881, for the return of Stamp Duty overpaid, shall apply to the return of duty overpaid on any statement delivered under this section, and in Scotland a return of duty overpaid on any statement so delivered shall be made in like manner as a return is now made of Stamp Duty overpaid on an additional inventory. 51 & 52 Vict. c. 60.

(7.) Where a further affidavit or additional inventory is delivered or exhibited of any estate or effects of a deceased person after a former affidavit or inventory of the estate and effects of the same person has been delivered or exhibited and recorded prior to the first day of June one thousand eight hundred and eighty-nine, it shall not be necessary to deliver any statement of the value of the estate and effects of such person under this section.

Estate Duty on successions.

6. (1.) Where the value of any succession upon the death of any person dying on or after the first day of June one thousand eight hundred and eighty-nine chargeable with duty under the Succession Duty Act, 1853, and the Customs and Inland Revenue Act, 1888, exceeds ten thousand pounds, and where the value of any succession to real property under the will or intestacy of any person so dying chargeable with duty under the said Act does not exceed ten thousand pounds, but such value together with the value of any other benefit taken by the successor under such will or intestacy exceeds ten thousand pounds, a separate statement of the value of the succession shall be delivered to the Commissioners of Inland Revenue, together with the Account to be delivered under section forty-five of the said Act. 16 & 17 Vict. c. 51.

(2.) There shall be charged and paid on every statement to be delivered in conformity with this section, in respect of the value of the succession, a duty of one pound for every full sum of one hundred pounds, and for any fraction of one hundred pounds over any multiple of one hundred pounds of such value.

(3.) The duty imposed by this section shall not be payable upon the value of leaseholds passing by will or devolution by law or of property included in an Account delivered according to section thirty-eight of the Customs and Inland Revenue Act, 1881, as amended by this Act, in respect of which value duty has been paid under the last preceding section.

(4.) The duty imposed by this section is to be in addition to any duties chargeable under the Succession Duty Act, 1853, and section twenty-one of the Customs and Inland Revenue Act, 1888, and shall, subject to the provisions of this Act, be assessed, and paid in like manner as Succession Duty, and be subject to the enactments relating to that duty, so far as the same are applicable. 51 & 52 Vict. c. 8.

(5.) The value upon which the duty imposed by this section in respect of a succession to real property is to be charged and assessed shall be ascertained in accordance with the Succession Duty Act, 1853, subject to the following provisions:—

(*a*) In the case of a successor who is entitled to the real property comprised in his succession for an estate in fee simple, or in fee according to the custom of any manor, or for lives renewable under any custom or under any lease for lives, or for any estate in tail, or under an entail under which he can acquire the property in fee simple without consent of any person, or is entitled to any such property for life, and competent to dispose as he shall think fit of a continuing interest therein, the value shall be the principal value of such property based upon the annual value estimated after making such allowances (if any) as ought to be made under the said Act. The duty payable in

A.D. 1889.

respect of such principal value shall not in any case exceed the amount which would be chargeable upon an annuity equal to such annual value according to the highest value in Table III. in the schedule of the Succession Duty Act, 1853:

(*b*) In the case of an increase of benefit accruing to a successor and chargeable to Succession Duty by reference to sections five, twenty, or twenty-five of the Succession Duty Act, 1853, where the value of the succsssion, apart from the increase of benefit, shall exceed ten thousand pounds, such increase of benefit shall be chargeable with duty under this section, whatever may be the value thereof; and where the value of the succession, apart from the increase of benefit, shall not exceed ten thousand pounds, the value of such increase of benefit, as well as of every preceding increase of benefit, shall be added to the value of the succession for the purpose of the said duty.

(6.) The duty imposed by this section shall in the case of real property be a first charge thereon, or on the interest of the successor therein, according as the duty is or is not chargeable on the principal value of such property, and shall be paid in like manner as if the duty were a part of the Succession Duty payable under section twenty-two of the Customs and Inland Revenue Act, 1888, and together with the payments in respect of that duty.

51 & 52 Vict. c. 8.

Duration of charge of Estate Duty.

7. The duties hereinbefore imposed by this part of this Act shall not be payable in respect of the value of the estate and effects of any person dying on or after the first day of June one thousand eight hundred and ninety-six, or of the value of any personal or moveable property included in an account by relation to the death of any person so dying, or in respect of the value of any succession upon the death of any person so dying, and statements of such values shall not be required.

Double duty or interest payable in case of default.

8. (1.) If any person who ought to deliver a statement as required by this part of this Act shall neglect to do so, he shall be liable to pay to Her Majesty double the amount of duty chargeable, and the same shall be a debt due from him to the Crown, and be recoverable by any of the ways or means now in force for the recovery of Probate, Legacy, or Succession Duties.

(2.) In any case in which any duty hereinbefore imposed by this part of this Act shall be in arrear, the person by whom the arrears of duty may be payable shall be liable to pay interest thereon at the rate of four pounds per centum per annum, and such interest shall be recoverable by the Commissioners of Inland Revenue in the same manner as the arrears of duty and as part thereof: Provided always, that the acceptance or recovery by the said Commissioners of arrears of duty, with interest thereon as aforesaid, shall be an absolute waiver of the penalties (if any) which may have been incurred.

The duties to be Stamp Duties.

9. (1.) The duties hereinbefore imposed by this part of this Act shall be Stamp Duties, and shall be under the care and management of the Commissioners of Inland Revenue, who by themselves and their officers shall have the same powers and authorities for the collection, recovery, and management thereof as are vested in them for the collection, recovery, and management of any Stamp Duties, and shall have all other powers and authorities requisite for carrying this part of this Act into execution.

(2.) The statements required to be delivered under this part of this Act shall be in such form as may be prescribed by the Commissioners of Inland Revenue, who shall provide forms accordingly, and the duty on the statement shall be denoted in such manner as the Commissioners may think proper.

Amendments of the law as to Succession Duty.

Amendments of Law as to Succession Duties and Duties on Accounts.

10. (1.) The allowance under section thirty-eight of the Succession Duty Act, 1853, to a successor upon taking a succession upon the death of any person dying on or

after the first day of June one thousand eight hundred and eighty-nine, shall only be made in respect of the value of property which the successor may have acquired by any title not conferring a succession on him, and which passes from the successor to some other person. A.D. 1889.

(2.) Subject to the relief given by section eighteen of the Succession Duty Act, 1853, in respect of property not amounting in money or principal value to the sum of one hundred pounds, the duties charged under the said Act, and section twenty-one of the Customs and Inland Revenue Act, 1888, shall be payable upon a succession upon the death of any person dying on or after the first day of June one thousand eight hundred and eighty-nine, although the value thereof shall be less than twenty pounds.

(3.) The Commissioners of Inland Revenue, if dissatisfied with the account and estimate originally delivered in conformity with section forty-five of the Succession Duty Act, 1853, may, subject to appeal as therein provided, assess the duty on the footing of such account and upon such estimate as they may place thereon, or proceed according to the directions of that section.

11. (1.) Sub-section two of section thirty-eight of the Customs and Inland Revenue Act, 1881, is hereby amended as follows:— Amendment of 44 & 45 Vict. c. 12, s. 38.

The description of property marked (*a*) shall be read as if the word "twelve" were substituted for the word "three" therein, and the said description of property shall include property taken under any gift, whenever made, of which property *bonâ fide* possession and enjoyment shall not have been assumed by the donee immediately upon the gift and thenceforward retained, to the entire exclusion of the donor, or of any benefit to him by contract or otherwise:

The description of property marked (*b*) shall be construed as if the expression "to be transferred to or vested in himself and any other person" included also any purchase or investment effected by the person who was absolutely entitled to the property either by himself alone, or in concert, or by arrangement, with any other person:

The description of property marked (*c*) shall be construed as if the expression "voluntary settlement" included any trust, whether expressed in writing or otherwise, in favour of a volunteer, and, if contained in a deed or other instrument effecting the settlement, whether such deed or other instrument was made for valuable consideration or not as between the settlor and any other person, and as if the expression "such property," wherever the same occurs, included the proceeds of the sale thereof:

The charge under the said section shall extend to money received under a policy of assurance effected by any person dying on or after the first day of June one thousand eight hundred and eighty-nine, on his life, where the policy is wholly kept up by him for the benefit of a donee, whether nominee or assignee, or a part of such money in proportion to the premiums paid by him, where the policy is partially kept up by him for such benefit.

(2.) A return of Stamp Duty shall not be made under sub-section three of the said section thirty-eight by reason of, or in relation to, any account delivered on or after the first day of June one thousand eight hundred and eighty-nine.

Limitation of Claims to Succession Duty or Legacy Duty in certain Cases.

12. (1.) Notwithstanding the forty-second section of the Succession Duty Act, 1853, or any other provision contained in that Act, real property, or any estate or interest therein, shall not, as against a purchaser for valuable consideration, or a mortgagee, remain charged with or liable to payment of any sum for Succession Duty Purchasers and mortgagees exempted from liability to

A.D. 1889.

Succession Duty after a specified period.

or duty hereinbefore imposed by this part of this Act, after the expiration of six years from the date of notice to the Commissioners of Inland Revenue of the fact that the successor, or any person in his right or on his behalf, has become entitled in possession to his succession or to the receipt of the income and profits thereof, or from the date of the first payment by such successor or person of any instalment or part of the duty, in case the successor shall not have availed himself of the option given to him by section twenty-two of the Customs and Inland Revenue Act, 1888, or after two years from the time for the payment by such successor of the last instalment or part of the duty, if he has availed himself of such option; or, in the absence of any such notice or payment, after the expiration of twelve years from the happening of the event (whether before or after the passing of this Act) which gave rise to an immediate claim to such duty, or if such period of twelve years expires within six years from the date of the passing of this Act, then after the expiration of six years from the last-mentioned date.

(2.) The duty (if any) unpaid at the expiration of such period of six years, or of twelve years or six years as the case may be, shall be payable and paid by the successor or the persons mentioned as accountable in section forty-four of the said Act, other than the purchaser or mortgagee, and shall become charged substitutively upon any other estate or interest comprised in the succession of the successor remaining vested in him, or in any person in his right or on his behalf, other than the purchaser or mortgagee, and in case of a mortgage upon the equity of redemption.

(3.) This section is not to lessen or affect any liability of any successor or accountable person, other than the purchaser or mortgagee, to payment of duty, whether out of money received on any sale or mortgage, or otherwise; but a purchaser or mortgagee shall not, for the purpose of obtaining the exemption conferred by this section, be bound to see that the duty is discharged out of the money or other consideration paid or given as the consideration for the sale or mortgage.

Power to deposit copies of documents and liability to duty to cease after a specified period.

13. (1.) Any person may cause an attested copy (which shall be exempt from Stamp Duty) of any document which creates a liability for payment of any Succession Duty, or duty hereinbefore imposed by this part of this Act, other than a testamentary document admitted to probate, to be deposited with the Commissioners of Inland Revenue at their principal office in London, Edinburgh, or Dublin, as the case may require, and such copy shall be received at that office.

(2.) The officer of the Commissioners receiving the copy shall, on the request of the person making the deposit, and either by indorsement on the original document or otherwise, give a receipt in writing under his hand for the copy.

(3.) After a receipt has been given by an officer for a copy of a document under this section, no person shall be liable for payment of any duty under such document after the expiration of six years from the date of notice to the Commissioners of the fact which gives rise to an immediate claim to such duty.

(4.) The costs of depositing a copy of a document and obtaining a receipt under this section shall be deemed costs duly incurred by a trustee, executor, or administrator, or any other person in the execution of his duties as trustee, executor, or administrator, or otherwise, under the document.

Liability to duty under documents admitted to probate to cease after a specified period.

14. No person shall, under a testamentary document admitted to probate, or under letters of administration, or under a confirmation, be liable for payment of any Legacy Duty or Succession Duty, or duty hereinbefore imposed by this part of this Act, after the expiration of six years from the date of the settlement of the account in respect of which the duty is payable, where such account was in all respects a full and true account and contained all the facts material to be known by the Commissioners of Inland Revenue for the ascertainment of the rate and amount of duty; and no trustee, executor, or administrator shall, after the expiration of such six years, be liable to such

duty if it is proved to the satisfaction of the Commissioners that the account rendered was correct to the best of his knowledge, information, and belief. A.D. 1889.

15. Every notice referred to in this part of this Act shall be in writing, and in such form as the Commissioners of Inland Revenue shall prescribe, and shall be delivered or sent in duplicate, and an acknowledgment of the receipt thereof, by or on behalf of the Commissioners, upon the duplicate shall be forthwith returned to the person by whom the notice was delivered or sent. As to notices under this part of this Act.

INTESTATES' ESTATES ACT, 1890. A.D. 1890.

CHAPTER 29.

An Act to amend the Law by making better Provision for the Widows of certain Intestates in the distribution of such Intestates' Property.

[25th July, 1890.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1. The real and personal estates of every man who shall die intestate after the first day of September one thousand eight hundred and ninety, leaving a widow but no issue shall, in all cases where the net value of such real and personal estates shall not exceed five hundred pounds, belong to his widow absolutely and exclusively. Intestate's estate not exceeding £500 to belong to widow where no issue.

2. Where the net value of the real and personal estates in the preceding section mentioned shall exceed the sum of five hundred pounds the widow of such intestate shall be entitled to five hundred pounds part thereof absolutely and exclusively, and shall have a charge upon the whole of such real and personal estates for such five hundred pounds, with interest thereon from the date of the death of the intestate at four per cent. per annum until payment. Intestate's estate exceeding £500, widow to have a charge for £500.

3. As between the real and personal representatives of such intestate such charge shall be borne and paid in proportion to the values of the real and personal estates respectively. How charge to be borne as between realty and personalty.

4. The provision for the widow intended to be made by this Act shall be in addition and without prejudice to her interest and share in the residue of the real and personal estates of such intestate remaining after payment of the sum of five hundred pounds, in the same way as if such residue had been the whole of such intestate's real and personal estates and this Act had not been passed. Above provision to be in addition to share of residue.

5. The net value of such real estates as aforesaid shall for the purposes of this Act be estimated in the case of a fee simple upon the basis of twenty years' purchase of the annual value by the year at the date of the death of the intestate as determined by law for the purposes of property tax, less the gross amount of any mortgage or other principal sum charged thereon, and less the value of any annuity or other periodical payment chargeable thereon, to be valued according to the tables and rules in the schedule annexed to the statute sixteenth and seventeenth Victoria, chapter fifty-one, and in the case of an estate for a life or lives according to the said tables and rules. How realty to be valued. [Succession Duties Act, 1853.]

6. The net value of such personal estate as aforesaid shall be ascertained by deducting from the gross value thereof all debts, funeral and testamentary expenses of the intestate, and all other lawful liabilities and charges to which the said personal estate shall be subject. How personalty to be valued.

7. This Act may be cited as the Intestates' Estates Act, 1890. Short title.

8. This Act shall not extend to Scotland. Extent of Act.

A.D. 1894.

FINANCE ACT, 1894. [57 & 58 Vict. c. 30.]

PART I.

Estate Duty.

Grant of Estate Duty.

Section.

1. Grant of Estate Duty.
2. What property is deemed to pass.
3. Exception for transactions for money consideration.
4. Aggregation of property to form one estate for purpose of duty.
5. Settled property.

Collection and Recovery of Duty and Value of Property.

6. Collection and recovery of Estate Duty.
7. Value of property.
8. Supplemental provisions as to collection, recovery, and repayment of and exemption from Estate Duty.
9. Charge of Estate Duty on property and facilities for raising it.
10. Appeal from Commissioners.

Discharge from and Apportionment of Duty.

11. Release of persons paying Estate Duty.
12. Commutation of duty on interest in expectancy.
13. Powers to accept composition for Death Duties.
14. Apportionment of duty.
15. Exemptions from Estate Duty.

Small Estates.

16. Provision for estates not exceeding £1000.

Rates of Estate Duty.

17. Scale of rates of Estate Duty.

Succession Duty.

18. Value of real successions for Succession Duty.

Local Taxation Grant.

19. Adaptation of law as to Probate Duty grant.

British Possessions.

20. Exception as to property in British Possessions.

Savings and Definitions.

21. Savings.
22. Definitions.

Application to Scotland.

23. Application of part of Act to Scotland.

Commencement.

24. Commencement of part of Act.

CHAPTER 30. A.D. 1894.

An Act to grant certain Duties of Customs and Inland Revenue, to alter other Duties, and to amend the Law relating to Customs and Inland Revenue, and to make other Provision for the Financial Arrangements of the Year. [31st July, 1894.]

PART I.

Estate Duty.

Grant of Estate Duty.

Grant of Estate Duty.

1. In the case of every person dying after the commencement of this Part of this Act, there shall, save as hereinafter expressly provided, be levied and paid, upon the principal value ascertained as hereinafter provided of all property, real or personal, settled or not settled, which passes on the death of such person a duty, called "Estate Duty," at the graduated rates hereinafter mentioned, and the existing duties mentioned in the First Schedule to this Act shall not be levied in respect of property chargeable with such Estate Duty.

What property is deemed to pass.

2. (1.) Property passing on the death of the deceased shall be deemed to include the property following (that is to say):—

(*a*) Property of which the deceased was at the time of his death competent to dispose:

(*b*) Property in which the deceased or any other person had an interest ceasing on the death of the deceased, to the extent to which a benefit accrues or arises by the cesser of such interest; but exclusive of property the interest in which of the deceased or other person was only an interest as holder of an office, or recipient of the benefits of a charity, or as a corporation sole:

(*c*) Property which would be required on the death of the deceased to be included in an account under section thirty-eight of the Customs and Inland Revenue Act, 1881, as amended by section eleven of the Customs and Inland Revenue Act, 1889, if those sections were herein enacted and extended to real property as well as personal property, and the words "voluntary" and "voluntarily" and a reference to a "volunteer" were omitted therefrom; and 44 & 45 Vict. c. 12. 52 & 53 Vict. c. 7.

(*d*) Any annuity or other interest purchased or provided by the deceased, either by himself alone or in concert or by arrangement with any other person, to the extent of the beneficial interest accruing or arising by survivorship or otherwise on the death of the deceased.

(2.) Property passing on the death of the deceased when situate out of the United Kingdom shall be included only, if, under the law in force before the passing of this Act, Legacy or Succession Duty is payable in respect thereof, or would be so payable but for the relationship of the person to whom it passes.

(3.) Property passing on the death of the deceased shall not be deemed to include property held by the deceased as trustee for another person, under a disposition not made by the deceased, or under a disposition made by the deceased more than twelve months before his death where possession and enjoyment of the property was *bonâ fide* assumed by the beneficiary immediately upon the creation of the trust and thenceforward retained to the entire exclusion of the deceased or of any benefit to him by contract or otherwise.

Exception for transactions for money consideration.

3. (1.) Estate Duty shall not be payable in respect of property passing on the death of the deceased by reason only of a *bonâ fide* purchase from the person under whose disposition the property passes, nor in respect of the falling into possession of the reversion on any lease for lives, nor in respect of the determination of any annuity for lives, where such purchase was made, or such lease or annuity granted, for full

A.D. 1894.

consideration in money or money's worth paid to the vendor or grantor for his own use or benefit, or in the case of a lease for the use or benefit of any person for whom the grantor was a trustee.

(2.) Where any such purchase was made, or lease or annuity granted, for partial consideration in money or money's worth paid to the vendor or grantor for his own use or benefit, or in the case of a lease for the use or benefit of any person for whom the grantor was a trustee, the value of the consideration shall be allowed as a deduction from the value of the property for the purpose of Estate Duty.

Aggregation of property to form one estate for purpose of duty.

4. For determining the rate of Estate Duty to be paid on any property passing on the death of the deceased, all property so passing in respect of which Estate Duty is leviable shall be aggregated so as to form one estate, and the duty shall be levied at the proper graduated rate on the principal value thereof:

Provided that any property so passing, in which the deceased never had an interest, or which under a disposition not made by the deceased passes immediately on the death of the deceased to some person other than the wife or husband or a lineal ancestor or lineal descendant of the deceased, shall not be aggregated with any other property but shall be an estate by itself, and the Estate Duty shall be levied at the proper graduated rate on the principal value thereof; but if any benefit under a disposition not made by the deceased is reserved or given to the wife or husband or a lineal ancestor or lineal descendant of the deceased, such benefit shall be aggregated with property of the deceased for the purpose of determining the rate of Estate Duty.

Settled property.

5. (1.) Where property in respect of which Estate Duty is leviable, is settled by the will of the deceased, or having been settled by some other disposition passes under that disposition on the death of the deceased to some person not competent to dispose of the property—

(*a*) a further Estate Duty (called Settlement Estate Duty) on the principal value of the settled property shall be levied at the rate hereinafter specified, except where the only life interest in the property after the death of the deceased is that of a wife or husband of the deceased; but

(*b*) during the continuance of the settlement the Settlement Estate Duty shall not be payable more than once.

(2.) If Estate Duty has already been paid in respect of any settled property since the date of the settlement, the Estate Duty shall not, nor shall any of the duties mentioned in the fifth paragraph of the First Schedule to this Act, be payable in respect thereof, until the death of a person who was at the time of his death or had been at any time during the continuance of the settlement competent to dispose of such property.

(3.) In the case of settled property, where the interest of any person under the settlement fails or determines by reason of his death before it becomes an interest in possession, and subsequent limitations under the settlement continue to subsist, the property shall not be deemed to pass on his death.

(4.) Any person paying the settlement Estate Duty payable under this section upon property comprised in a settlement, may deduct the amount of the *ad valorem* Stamp Duty (if any) charged on the settlement in respect of that property.

(5.) Where any lands or chattels are so settled, whether by Act of Parliament or royal grant, that no one of the persons successively in possession thereof is capable of alienating the same, whether his interest is in law a tenancy for life or a tenancy in tail, the provisions of this Act with respect to settled property shall not apply, and the property passing on the death of any person in possession of the lands and chattels shall be the interest of his successor in the lands and chattels, and such interest shall be valued, for the purpose of Estate Duty, in like manner as for the purpose of Succession Duty.

A.D. 1894.

Collection and Recovery of Duty and Value of Property.

Collection and recovery of Estate Duty.

6. (1.) Estate Duty shall be a Stamp Duty, collected and recovered as hereinafter mentioned.

(2.) The executor of the deceased shall pay the Estate Duty in respect of all personal property (wheresoever situate) of which the deceased was competent to dispose at his death, on delivering the Inland Revenue affidavit, and may pay in like manner the Estate Duty in respect of any other property passing on such death, which by virtue of any testamentary disposition of the deceased is under the control of the executor, or, in the case of property not under his control, if the persons accountable for the duty in respect thereof request him to make such payment.

(3.) Where the executor does not know the amount or value of any property which has passed on the death, he may state in the Inland Revenue affidavit that such property exists but he does not know the amount or value thereof, and that he undertakes, as soon as the amount and value are ascertained, to bring in an account thereof, and to pay both the duty for which he is or may be liable, and any further duty payable by reason thereof for which he is or may be liable in respect of the other property mentioned in the affidavit.

(4.) Estate Duty, so far as not paid by the executor, shall be collected upon an account setting forth the particulars of the property, and delivered to the Commissioners within six months after the death by the person accountable for the duty, or within such further time as the Commissioners may allow.

(5.) Every estate shall include all income accrued upon the property included therein down to and outstanding at the date of the death of the deceased.

(6.) Interest at the rate of three per cent. per annum on the Estate Duty shall be paid from the date of the death up to the date of the delivery of the Inland Revenue affidavit or account, or the expiration of six months after the death, whichever first happens, and shall form part of the Estate Duty.

(7.) The duty which is to be collected upon an Inland Revenue affidavit or account shall be due on the delivery thereof, or on the expiration of six months from the death, whichever first happens.

(8.) Provided that the duty due upon an account of real property may, at the option of the person delivering the account, be paid by eight equal yearly instalments, or sixteen half-yearly instalments, with interest at the rate of three per cent. per annum from the date at which the first instalment is due, less income tax, and the first instalment shall be due at the expiration of twelve months from the death, and the interest on the unpaid portion of the duty shall be added to each instalment and paid accordingly; but the duty for the time being unpaid, with such interest to the date of payment, may be paid at any time, and in case the property is sold, shall be paid on completion of the sale, and if not so paid shall be duty in arrear.

Value of property.

7. (1.) In determining the value of an estate for the purpose of Estate Duty allowance shall be made for reasonable funeral expenses and for debts and incumbrances; but an allowance shall not be made—

(*a*) for debts incurred by the deceased, or incumbrances created by a disposition made by the deceased, unless such debts or incumbrances were incurred or created *bonâ fide* for full consideration in money or money's worth wholly for the deceased's own use and benefit and take effect out of his interest, nor

(*b*) for any debt in respect whereof there is a right to reimbursement from any other estate or person, unless such reimbursement cannot be obtained, nor

(*c*) more than once for the same debt or incumbrance charged upon different portions of the estate;

A.D. 1894.

and any debt or incumbrance for which an allowance is made shall be deducted from the value of the land or other subjects of property liable thereto.

(2.) An allowance shall not be made in the first instance for debts due from the deceased to persons resident out of the United Kingdom (unless contracted to be paid in the United Kingdom, or charged on property situate within the United Kingdom), except out of the value of any personal property of the deceased situate out of the United Kingdom in respect of which Estate Duty is paid; and there shall be no repayment of Estate Duty in respect of any such debts, except to the extent to which it is shown to the satisfaction of the Commissioners, that the personal property of the deceased situate in the foreign country or British Possession in which the person to whom such debts are due resides, is insufficient for their payment.

(3.) Where the Commissioners are satisfied that any additional expense in administering or in realizing property has been incurred by reason of the property being situate out of the United Kingdom, they may make an allowance from the value of the property on account of such expense not exceeding in any case five per cent. on the value of the property.

(4.) Where any property passing on the death of the deceased is situate in a foreign country, and the Commissioners are satisfied that by reason of such death any duty is payable in that foreign country in respect of that property, they shall make an allowance of the amount of that duty from the value of the property.

(5.) The principal value of any property shall be estimated to be the price which, in the opinion of the Commissioners, such property would fetch if sold in the open market at the time of the death of the deceased;

Provided that, in the case of any agricultural property, where no part of the principal value is due to the expectation of an increased income from such property, the principal value shall not exceed twenty-five times the annual value as assessed under Schedule A. of the Income Tax Acts, after making such deductions as have not been allowed in that assessment and are allowed under the Succession Duty Act, 1853, and making a deduction for expenses of management not exceeding five per cent. of the annual value so assessed.

16 & 17 Vict. c. 51.

(6.) Where an estate includes an interest in expectancy, Estate Duty in respect of that interest shall be paid, at the option of the person accountable for the duty, either with the duty in respect of the rest of the estate or when the interest falls into possession, and if the duty is not paid with the Estate Duty in respect of the rest of the estate, then—

(*a*) for the purpose of determining the rate of Estate Duty in respect of the rest of the estate the value of the interest shall be its value at the date of the death of the deceased; and

(*b*) the rate of Estate Duty in respect of the interest when it falls into possession shall be calculated according to its value when it falls into possession, together with the value of the rest of the estate as previously ascertained.

(7.) The value of the benefit accruing or arising from the cesser of an interest ceasing on the death of the deceased shall—

(*a*) if the interest extended to the whole income of the property, be the principal value of that property; and

(*b*) if the interest extended to less than the whole income of the property, be the principal value of an addition to the property equal to the income to which the interest extended.

(8.) Subject to the provisions of this Act, the value of any property for the purpose of Estate Duty shall be ascertained by the Commissioners in such manner and by such means as they think fit, and, if they authorize a person to inspect any property and report to them the value thereof for the purposes of this Act, the person having the

custody or possession of that property shall permit the person so authorized to inspect it at such reasonable times as the Commissioners consider necessary.

(9.) Where the Commissioners require a valuation to be made by a person named by them, the reasonable costs of such valuation shall be defrayed by the Commissioners.

(10.) Property passing on any death shall not be aggregated more than once, nor shall Estate Duty in respect thereof be more than once levied on the same death.

Supplemental provisions as to collection, recovery, and repayment of and exemption from Estate Duty.

8. (1.) The existing law and practice relating to any of the duties now leviable on or with reference to death shall, subject to the provisions of this Act and so far as the same are applicable, apply for the purposes of the collection, recovery, and repayment of Estate Duty, and for the exemption of the property of common seamen, marines, or soldiers who are slain or die in the service of Her Majesty, and for the purpose of payment of sums under one hundred pounds without requiring representation, as if such law and practice were in terms made applicable to this Part of this Act.

52 & 53 Vict. c. 7. 54 & 55 Vict. c. 66.

(2.) Sections twelve to fourteen of the Customs and Inland Revenue Act, 1889, and section forty-seven of the Local Registration of Title (Ireland) Act, 1891, shall apply as if Estate Duty were therein mentioned as well as Succession Duty, and as if an account were not settled within the meaning of any of the above sections until the time for the payment of the duty on such account has arrived.

(3.) The executor of the deceased shall, to the best of his knowledge and belief, specify in appropriate accounts annexed to the Inland Revenue affidavit all the property in respect of which Estate Duty is payable upon the death of the deceased, and shall be accountable for the Estate Duty in respect of all personal property wheresoever situate of which the deceased was competent to dispose at his death, but shall not be liable for any duty in excess of the assets which he has received as executor, or might but for his own neglect or default have received.

(4.) Where property passes on the death of the deceased, and his executor is not accountable for the Estate Duty in respect of such property, every person to whom any property so passes for any beneficial interest in possession, and also, to the extent of the property actually received or disposed of by him, every trustee, guardian, committee, or other person in whom any interest in the property so passing or the management thereof is at any time vested, and every person in whom the same is vested in possession by alienation or other derivative title, shall be accountable for the Estate Duty on the property, and shall, within the time required by this Act or such later time as the Commissioners allow, deliver to the Commissioners and verify an account, to the best of his knowledge and belief, of the property: Provided that nothing in this section contained shall render a person accountable for duty who acts merely as agent or bailiff for another person in the management of property.

(5.) Every person accountable for Estate Duty, and every person whom the Commissioners believe to have taken possession of or administered any part of the estate in respect of which duty is leviable on the death of the deceased, or of the income of any part of such estate, shall, to the best of his knowledge and belief, if required by the Commissioners, deliver to them and verify a statement of such particulars together with such evidence as they require relating to any property which they have reason to believe to form part of an estate in respect of which Estate Duty is leviable on the death of the deceased.

(6.) A person who wilfully fails to comply with any of the foregoing provisions of this section shall be liable to pay one hundred pounds, or a sum equal to double the amount of the Estate Duty, if any, remaining unpaid for which he is accountable, according as the Commissioners elect: Provided that the Commissioners, or in any proceeding for the recovery of such penalty the Court, shall have power to reduce any such penalty.

A.D. 1894.

(7.) Estate Duty shall, in the first instance, be calculated at the appropriate rate according to the value of the estate as set forth in the Inland Revenue affidavit or account delivered, but if afterwards it appears that for any reason too little duty has been paid, the additional duty shall, unless a certificate of discharge has been delivered under this Act, be payable, and be treated as duty in arrear.

(8.) The Commissioners on application from a person accountable for the duty on any property forming part of an estate shall, where they consider that it can conveniently be done, certify the amount of the valuation accepted by them for any class or description of property forming part of such estate.

(9.) Where the Commissioners are satisfied that the Estate Duty leviable in respect of any property cannot without excessive sacrifice be raised at once, they may allow payment to be postponed for such period, to such extent, and on payment of such interest not exceeding four per cent. or any higher interest yielded by the property, and on such terms, as the Commissioners think fit.

(10.) Interest on arrears of Estate Duty shall be paid as if they were arrears of Legacy Duty.

(11.) If after the expiration of twenty years from a death upon which Estate Duty became leviable any such duty remains unpaid, the Commissioners may, if they think fit, on the application of any person accountable or liable for such duty or interested in the property, remit the payment of such duty or any part thereof or any interest thereon.

(12.) Where it is proved to the satisfaction of the Commissioners that too much Estate Duty has been paid, the excess shall be repaid by them, and in cases where the over-payment was due to over-valuation by the Commissioners, with interest at three per cent. per annum.

(13.) Where any proceeding for the recovery of Estate Duty in respect of any property is instituted, the High Court shall have jurisdiction to appoint a receiver of the property and the rents and profits thereof, and to order a sale of the property.

(14.) All affidavits, accounts, certificates, statements, and forms used for the purpose of this Part of this Act shall be in such form, and contain such particulars, as may be prescribed, and if so required by the Commissioners shall be in duplicate, and accounts and statements shall be delivered and verified on oath and by production of books and documents in the manner prescribed, and any person who wilfully fails to comply with the provisions of this enactment shall be liable to the penalty above in this section mentioned.

(15.) No charge shall be made for any certificate given by the Commissioners under this Act.

(16.) The Estate Duty may be collected by means of stamps or such other means as the Commissioners prescribe.

44 & 45 Vict. c. 12.

(17.) The form of certificate required to be given by the proper officer of the court under section thirty of the Customs and Inland Revenue Act, 1881, may be varied by a rule of Court in such manner as may appear necessary for carrying into effect this Act.

(18.) Nothing in this section shall render liable to or accountable for duty a *bonâ fide* purchaser for valuable consideration without notice.

Charge of Estate Duty on property, and facilities for raising it.

9. (1.) A rateable part of the Estate Duty on an estate, in proportion to the value of any property which does not pass to the executor as such, shall be a first charge on the property in respect of which duty is leviable; provided that the property shall not be so chargeable as against a *bonâ fide* purchaser thereof for valuable consideration without notice.

(2.) On an application submitting in the prescribed form the description of the lands or other subjects of property (whether hereditaments, stocks, funds, shares, or

securities), and of the debts and incumbrances allowed by the Commissioners in assessing the value of the property for the purposes of Estate Duty, the Commissioners shall grant a certificate of the Estate Duty paid in respect of the property, and specify the debts and incumbrances so allowed, as well as the lands or other subjects of property. A.D. 1894.

(3.) Subject to any repayment of Estate Duty arising from want of title to the land or other subjects of property, or from the existence of any debt or incumbrance thereon for which under this Act an allowance ought to have been but has not been made, or from any other cause, the certificate of the Commissioners shall be conclusive evidence that the amount of duty named therein is a first charge on the lands or other subjects of property after the debts and incumbrances allowed as aforesaid: Provided that any such repayment of duty by the Commissioners shall be made to the person producing to them the said certificate.

(4.) If the rateable part of the Estate Duty in respect of any property is paid by the executor, it shall where occasion requires be repaid to him by the trustees or owners of the property, but if the duty is in respect of real property, it may, unless otherwise agreed upon, be repaid by the same instalments and with the same interest as are in this Act mentioned.

(5.) A person authorized or required to pay the Estate Duty in respect of any property shall, for the purpose of paying the duty, or raising the amount of the duty when already paid, have power, whether the property is or is not vested in him, to raise the amount of such duty and any interest and expenses properly paid or incurred by him in respect thereof, by the sale or mortgage of or a terminable charge on that property or any part thereof.

(6.) A person having a limited interest in any property, who pays the Estate Duty in respect of that property, shall be entitled to the like charge, as if the Estate Duty in respect of that property had been raised by means of a mortgage to him.

(7.) Any money arising from the sale of property comprised in a settlement, or held upon trust to lay out upon the trusts of a settlement, and capital money arising under the Settled Land Act, 1882, may be expended in paying any Estate Duty in respect of property comprised in the settlement and held upon the same trusts. 45 & 46 Vict. c. 38.

10. (1.) Any person aggrieved by the decision of the Commissioners with respect to the repayment of any excess of duty paid, or by the amount of duty claimed by the Commissioners, whether on the ground of the value of any property or the rate charged or otherwise, may, on payment of, or giving security as hereinafter mentioned for, the duty claimed by the Commissioners or such portion of it as is then payable by him, appeal to the High Court within the time and in the manner and on the conditions directed by rules of Court, and the amount of duty shall be determined by the High Court, and if the duty as determined is less than that paid to the Commissioners the excess shall be repaid. Appeal from Commissioners.

(2.) No appeal shall be allowed from any order, direction, determination, or decision of the High Court in any appeal under this section except with the leave of the High Court or Court of Appeal.

(3.) The costs of the appeal shall be in the discretion of the Court, and the Court, where it appears to the Court just, may order the Commissioners to pay on any excess of duty repaid by them interest at the rate of three per cent. per annum for such period as appears to the Court just.

(4.) Provided that the High Court, if satisfied that it would impose hardship to require the appellant, as a condition of an appeal, to pay the whole or, as the case may be, any part of the duty claimed by the Commissioners or of such portion of it as is then payable by him, may allow an appeal to be brought on payment of no duty, or of such part only of the duty as to the Court seems reasonable, and on security to the

A.D. 1894.

satisfaction of the Court being given for the duty, or so much of the duty as is not so paid, but in such case the Court may order interest at the rate of three per cent. per annum to be paid on the unpaid duty so far as it becomes payable under the decision of the Court.

(5.) Where the value as alleged by the Commissioners of the property in respect of which the dispute arises does not exceed ten thousand pounds, the appeal under this section may be to the county court for the county or place in which the appellant resides or the property is situate, and this section shall for the purpose of the appeal apply as if such county court were the High Court.

(6.) The county council of every county or county borough in Great Britain, shall within twelve months after the commencement of this Act, and may thereafter from time to time, appoint a sufficient number of qualified persons to act as valuers for the purposes of this Act in their respective counties, and shall fix a scale of charges for the remuneration of such persons, and the Court may refer any question of disputed value under this section to the arbitration of any person so appointed for the county in which the appellant resides or the property is situate; and the costs of any such arbitration shall be part of the costs of the appeal.

Discharge from and Apportionment of Duty.

Release of persons paying Estate Duty.

11. (1.) The Commissioners on being satisfied that the full Estate Duty has been or will be paid in respect of an estate or any part thereof shall, if required by the person accounting for the duty, give a certificate to that effect, which shall discharge from any further claim for Estate Duty the property shown by the certificate to form the estate or part thereof as the case may be.

(2.) Where a person accountable for the Estate Duty in respect of any property passing on a death applies after the lapse of two years from such death to the Commissioners, and delivers to them and verifies a full statement to the best of his knowledge and belief of all property passing on such death and the several persons entitled thereto, the Commissioners may determine the rate of the Estate Duty in respect of the property for which the applicant is accountable, and on payment of the duty at that rate, that property and the applicant so far as regards that property shall be discharged from any further claim for Estate Duty, and the Commissioners shall give a certificate of such discharge.

(3.) A certificate of the Commissioners under this section shall not discharge any person or property from Estate Duty in case of fraud or failure to disclose material facts, and shall not affect the rate of duty payable in respect of any property afterwards shown to have passed on the death, and the duty in respect of such property shall be at such rate as would be payable if the value thereof were added to the value of the property in respect of which duty has been already accounted for;

(4.) Provided nevertheless that a certificate purporting to be a discharge of the whole Estate Duty payable in respect of any property included in the certificate shall exonerate a *bonâ fide* purchaser for valuable consideration without notice from the duty notwithstanding any such fraud or failure.

Commutation of duty on interest in expectancy.

12. The commissioners in their discretion, upon application by a person entitled to an interest in expectancy, may commute the Estate Duty which would or might, but for the commutation, become payable in respect of such interest for a certain sum to be presently paid, and for determining that sum shall cause a present value to be set upon such duty, regard being had to the contingencies affecting the liability to and rate and amount of such duty, and interest being reckoned at three per cent.; and on the receipt of such sum they shall give a certificate of discharge accordingly.

Powers to accept com-

13. (1.) Where, by reason of the number of deaths on which property has passed or of the complicated nature of the interests of different persons in property which has

passed on death, or from any other cause, it is difficult to ascertain exactly the amount of Death Duties or any of them payable in respect of any property or any interest therein, or so to ascertain the same without undue expense in proportion to the value of the property or interest, the Commissioners on the application of any person accountable for any duty thereon, and upon his giving to them all the information in his power respecting the amount of the property and the several interests therein, and other circumstances of the case, may by way of composition for all or any of the Death Duties payable in respect of the property, or interest, and the various interests therein, or any of them, assess such sum on the value of the property, or interest, as having regard to the circumstances appears proper, and may accept payment of the sum so assessed, in full discharge of all claims for Death Duties in respect of such property or interest, and shall give a certificate of discharge accordingly; A.D. 1894. Composition for Death Duties.

(2.) Provided that the certificate shall not discharge any person from any duty in case of fraud or failure to disclose material facts.

(3.) In this section the expression "Death Duties," means the Estate Duty under this Act, the duties mentioned in the first Schedule to this Act and the Legacy and Succession Duties, and the duty payable on any representation or inventory under any Act in force before the Customs and Inland Revenue Act, 1881. 44 & 45 Vict. c. 12.

14. (1.) In the case of property which does not pass to the executor as such, an amount equal to the proper rateable part of the Estate Duty may be recovered by the person, who being authorized or required to pay the Estate Duty in respect of any property has paid such duty, from the person entitled to any sum charged on such property (whether as capital or as an annuity or otherwise), under a disposition not containing any express provision to the contrary. Apportionment of duty.

(2.) Any dispute as to the proportion of Estate Duty to be borne by any property or person, may be determined upon application by any person interested in manner directed by Rules of Court, either by the High Court, or, where the amount in dispute is less than fifty pounds, by a county court for the county or place in which the person recovering the same resides, or the property in respect of which the duty is paid is situate.

(3.) Any person from whom a rateable part of Estate Duty can be recovered under this section shall be bound by the accounts and valuations as settled between the person entitled to recover the same and the Commissioners.

15. (1.) Estate Duty shall not be payable in respect of a single annuity not exceeding twenty-five pounds purchased or provided by the deceased, either by himself alone or in concert or arrangement with any other person, for the life of himself and of some other person and the survivor of them, or to arise on his own death in favour of some other person; and if in any case there is more than one such annuity, the annuity first granted shall be alone entitled to the exemption under this section. Exemptions from Estate Duty.

(2.) It shall be lawful for the Treasury to remit the Estate Duty, or any other duty leviable on or with reference to death, in respect of any such pictures, prints, books, manuscripts, works of art or scientific collections, as appear to the Treasury to be of national, scientific, or historic interest, and to be given or bequeathed for national purposes, or to any university, or to any county council or municipal corporation, and no property the duty in respect of which is so remitted shall be aggregated with any other property for the purpose of fixing the rate of Estate Duty.

(3.) Estate Duty shall not be payable in respect of any pension or annuity payable by the Government of British India to the widow or child of any deceased officer of such Government, notwithstanding that the deceased contributed during his lifetime to any fund out of which such pension or annuity is paid.

(4.) Estate Duty shall not be payable in respect of any advowson or church patronage which would have been free from Succession Duty under section twenty-four of the Succession Duty Act, 1853. 16 & 17 Vict. c. 51.

A.D. 1894.

Small Estates.

Provision for estates not exceeding £1000. 44 & 45 Vict. c. 12.

16. (1.) The provisions of sections thirty-three, thirty-five, and thirty-six of the Customs and Inland Revenue Act, 1881 (relating to the obtaining of representation to the deceased where the gross value of his personal estate does not exceed three hundred pounds), shall apply with the necessary modifications to the case where the gross value of the property real and personal in respect of which Estate Duty is payable on the death of the deceased, exclusive of property settled otherwise than by the will of the deceased, does not exceed five hundred pounds, and where the gross value does not exceed three hundred pounds the fixed duty shall be thirty shillings, and where the gross value exceeds three hundred pounds and does not exceed five hundred pounds the fixed duty shall be fifty shillings.

(2.) All such property may be comprised in the notice under the said section thirty-three.

(3.) Where the net value of the property, real and personal, in respect of which Estate Duty is payable on the death of the deceased, exclusive of property settled otherwise than by the will of the deceased, does not exceed one thousand pounds, such property, for the purpose of Estate Duty, shall not be aggregated with any other property, but shall form an estate by itself; and where the fixed duty or Estate Duty has been paid upon the principal value of that estate, the Settlement Estate Duty and the Legacy and Succession Duties shall not be payable under the will or intestacy of the deceased in respect of that estate.

(4.) Where representation granted under this section if granted in England extends to property in Ireland, and if granted in Ireland extends to property in England, the principal registrar of the Probate Division of the High Court in England or Ireland, as the case may be, shall affix the seal of the Court thereto on the same being sent to him for that purpose, with the fee of two shillings and sixpence.

(5.) Where the fixed duty of thirty or fifty shillings is paid within twelve months after the death of the deceased, interest on such duty shall not be payable.

Rates of Estate Duty.

Scale of rates of Estate Duty.

17. The rates of Estate Duty shall be according to the following scale:—

Where the Principal Value of the Estate					Estate Duty shall be payable at the Rate per cent. of
	£			£	
Exceeds	100	and does not	exceed	500	One pound.
„	500	„	„	1000	Two pounds.
„	1000	„	„	10,000	Three pounds.
„	10,000	„	„	25,000	Four pounds.
„	25,000	„	„	50,000	Four pounds ten shillings.
„	50,000	„	„	75,000	Five pounds.
„	75,000	„	„	100,000	Five pounds ten shillings.
„	100,000	„	„	150,000	Six pounds.
„	150,000	„	„	250,000	Six pounds ten shillings.
„	250,000	„	„	500,000	Seven pounds.
„	500,000	„	„	1,000,000	Seven pounds ten shillings.
„	1,000,000	- - - - - -			Eight pounds.

The rate of the Settlement Estate Duty where the property is settled shall be one per cent.

Provided that for any fractional part of ten pounds over ten pounds or any multiple

thereof, the Estate Duty and the Settlement Estate Duty shall be payable at the rate per cent. for the full sum of ten pounds. A.D. 1894.

Succession Duty.

Value of real successions for Succession Duty.

18. (1.) The value for the purpose of Succession Duty of a succession to real property arising on the death of a deceased person shall, where the successor is competent to dispose of the property, be the principal value of the property, after deducting the Estate Duty payable in respect thereof on the said death and the expenses if any properly incurred of raising and paying the same; and the duty shall be a charge on the property, and shall be payable by the same instalments as are authorized by this Act for Estate Duty on real property, with interest at the rate of three per cent. per annum; and the first instalment shall be payable and the interest shall begin to run at the expiration of twelve months after the date on which the successor became entitled in possession to his succession or to the receipt of the income and profit thereof; and after the expiration of the said twelve months the provisions with respect to discount shall not apply.

(2.) The principal value of real property for the purpose of Succession Duty shall be ascertained in the same manner as it would be ascertained under the provisions of this Act for the purpose of Estate Duty; and in the case of any agricultural property where no part of the principal value is due to the expectation of an increased income from such property, the annual value for the purpose of Succession Duty shall be arrived at in the same manner as under the provisions of this Part of this Act for the purpose of Estate Duty.

Local Taxation Grant.

Adaptation of law as to Probate Duty grant. 51 & 52 Vict. cc. 41 & 60. 52 & 53 Vict. c. 50. 44 & 45 Vict. c. 12.

19. In substitution for the grant out of the Probate Duties under the Local Government Act, 1888, the Probate Duty (Scotland and Ireland) Act, 1888, and the Local Government (Scotland) Act, 1889, there shall be paid, out of the proceeds of the Estate Duty derived from personal property, such sum as the Commissioners, in accordance with regulations made by the Treasury under those Acts, may determine to be an amount equal to one and a half per cent. on the net value of such of the property in respect of which Estate Duty is leviable as would, if this Act had not been passed, have been chargeable with the duty imposed by section twenty-seven of the Customs and Inland Revenue Act, 1881, on Inland Revenue affidavits, and the first-mentioned Acts shall apply, as if the sum so determined were the Probate Duty grant or one half of the proceeds of the sums collected in respect of the Probate Duties (as the case requires) within the meaning of those Acts.

British Possessions.

Exception as to property in British Possessions.

20. (1.) Where the Commissioners are satisfied, that in a British possession to which this section applies, duty is payable by reason of a death in respect of any property situate in such possession and passing on such death, they shall allow a sum equal to the amount of that duty to be deducted from the Estate Duty payable in respect of that property on the same death.

(2.) Nothing in this Act shall be held to create a charge for Estate Duty on any property situate in a British possession, while so situate, or to authorize the Commissioners to take any proceedings in a British possession for the recovery of any Estate Duty.

(3.) Her Majesty the Queen may, by Order in Council, apply this section to any British possession, where Her Majesty is satisfied that, by the law of such possession, either no duty is leviable in respect of property situate in the United Kingdom when

A.D. 1894.

passing on death, or that the law of such possession as respects any duty so leviable is to the like effect as the foregoing provisions of this section.

(4.) Her Majesty in Council may revoke any such Order, where it appears that the law of the British possession has been so altered that it would not authorize the making of an order under this section.

Savings and Definitions.

Savings.

21. (1.) Estate Duty shall not be payable on the death of a deceased person in respect of personal property settled by a will or disposition made by a person dying before the commencement of this Part of this Act, in respect of which property any duty mentioned in paragraphs one and two of the First Schedule to this Act, or the duty payable on any representation or inventory under any Act in force before the Customs and Inland Revenue Act, 1881, has been paid or is payable, unless in either case the deceased was at the time of his death, or at any time since the will or disposition took effect had been, competent to dispose of the property.

44 & 45 Vict. c. 12.

(2.) Where a person died before the commencement of this Part of this Act, the duties mentioned in the First Schedule to this Act shall continue to be payable in like manner in all respects as if this Act had not passed.

(3.) Where an interest in expectancy in any property has, before the commencement of this Part of this Act, been *bonâ fide* sold or mortgaged for full consideration in money or money's worth, then no other duty on such property shall be payable by the purchaser or mortgagee, when the interest falls into possession, than would have been payable if this Act had not passed; and in the case of a mortgage, any higher duty payable by the mortgagor shall rank as a charge subsequent to that of the mortgagee.

(4.) The Settlement Estate Duty of one per cent. shall not be payable in respect of property settled by a disposition which has taken effect before the commencement of this Part of this Act.

(5.) Where a husband or wife is entitled, either solely or jointly with the other, to the income of any property settled by the other under a disposition which has taken effect before the commencement of this Part of this Act, and on his or her death the survivor becomes entitled to the income of the property settled by such survivor, Estate Duty shall not be payable in respect of that property until the death of the survivor.

Definitions.

22. (1.) In this Part of this Act, unless the context otherwise requires:—

(*a*) The expressions "deceased person" and "the deceased" mean a person dying after the commencement of this Part of this Act:

(*b*) The expression "will" includes any testamentary instrument:

(*c*) The expression "representation" means probate of a will or letters of administration:

(*d*) The expression "executor" means the executor or administrator of a deceased person, and includes, as regards any obligation under this Part of this Act, any person who takes possession of or intermeddles with the personal property of a deceased person:

(*e*) The expression "Estate Duty" means Estate Duty under this Act:

(*f*) The expression "property" includes real property and personal property and the proceeds of sale thereof respectively and any money or investment for the time being representing the proceeds of sale:

(*g*) The expression "agricultural property" means agricultural land pasture and woodland, and also includes such cottages, farm buildings, farm houses, and mansion houses (together with the lands occupied therewith) as are of a character appropriate to the property:

(*h*) The expression "settled property" means property comprised in a settlement:

A.D. 1894.

(*i*) The expression "settlement" means any instrument, whether relating to real property or personal property, which is a settlement within the meaning of section two of the Settled Land Act, 1882, or if it related to real property would be a settlement within the meaning of that section, and includes a settlement effected by a parol trust: 45 & 46 Vict. c. 38.

(*j*) The expression "interest in expectancy" includes an estate in remainder or reversion and every other future interest whether vested or contingent, but does not include reversions expectant upon the determination of leases:

(*k*) The expression "incumbrances" includes mortgages and terminable charges:

(*l*) The expression "property passing on the death" includes property passing either immediately on the death or after any interval, either certainly or contingently, and either originally or by way of substitutive limitation, and the expression "on the death" includes "at a period ascertainable only by reference to the death:"

(*m*) The expression "the Commissioners" means the Commissioners of Inland Revenue:

(*n*) The expression "Inland Revenue affidavit" means an affidavit made under the enactments specified in the Second Schedule to this Act with the account and schedule annexed thereto:

(*o*) The expression "prescribed" means prescribed by the Commissioners.

(2.) For the purposes of this Part of this Act—

(*a*) A person shall be deemed competent to dispose of property if he has such an estate or interest therein or such general power as would, if he were *sui juris*, enable him to dispose of the property, including a tenant-in-tail whether in possession or not; and the expression "general power" includes every power or authority enabling the donee or other holder thereof to appoint or dispose of property as he thinks fit, whether exercisable by instrument *inter vivos* or by will, or both, but exclusive of any power exerciseable in a fiduciary capacity under a disposition not made by himself, or exerciseable as tenant-for-life under the Settled Land Act, 1882, or as mortgagee: 45 & 46 Vict. c. 38.

(*b*) A disposition taking effect out of the interest of the deceased person shall be deemed to have been made by him, whether the concurrence of any other person was or was not required:

(*c*) Money which a person has a general power to charge on property shall be deemed to be property of which he has power to dispose.

(3.) This Part of this Act shall apply to property in which the wife or husband of the deceased takes an estate in dower or by the courtesy or any other like estate, in like manner as it applies to property settled by the will of the deceased.

Application to Scotland.

Application of Part of Act to Scotland.

23. In the application of this Part of this Act to Scotland unless the context otherwise requires:—

(1.) The Court of Session shall be substituted for the High Court:

(2.) "Sheriff court" shall be substituted for "county court:"

(3.) "Confirmation" shall be substituted for "representation:"

(4.) The expression "receiver of the property and of the rents and profits thereof," means a judicial factor upon the property:

(5.) The expression "Inland Revenue affidavit" means the inventory of the personal estate of a deceased now required by law, and includes an additional inventory:

(6.) The expression "on delivering the Inland Revenue affidavit" means on exhibiting and recording a duly stamped inventory as provided by section thirty-eight

A.D. 1894.

of the Act of the forty-eighth year of the reign of King George the Third, chapter one hundred and forty-nine:

44 & 45 Vict. c. 12.

(7.) Section thirty-four of the Customs and Inland Revenue Act, 1881, shall be substituted for section thirty-three of that Act, and the Acts referred to in such section thirty-four shall extend to an estate of a gross value not exceeding five hundred pounds, and an application under the said Acts may be made to any commissary clerk, and any commissary clerk shall affix the seal of the Court to any representation granted in England or Ireland upon the same being sent to him for that purpose, enclosing a fee of two shillings and sixpence:

(8.) The expression "personal property" means moveable property:

(9.) The expression "real property" includes heritable property:

(10.) The expression "incumbrance" includes any heritable security, or other debt or payment secured upon heritage:

(11.) The expression "executor" means every person who as executor, nearest of kin, or creditor, or otherwise, intromits with or enters upon the possession or management of any personal property of a deceased person:

(12.) The property comprised in any special assignation or disposition taking effect on death shall be deemed to pass on death within the meaning of this Act:

(13.) The expression "trustee" includes a tutor, curator, and judicial factor:

(14.) The expression "settled property" shall not include property held under entail:

(15.) An institute or heir of entail in possession of an entailed estate shall whether *sui juris* or not be deemed for the purposes of this Act to be a person competent to dispose of such estate:

(16.) Where an entailed estate passes on the death of the deceased to an institute or heir of entail, who is not entitled to disentail such estate without either obtaining the consent of one or more subsequent heirs of entail or having the consent of such one or more subsequent heirs valued and dispensed with, Settlement Estate Duty as well as Estate Duty shall be paid in respect of such estate, but neither Estate Duty nor Settlement Estate Duty shall be payable again in respect of such estate, until such estate is disentailed, or until an heir of entail to whom it passes on or subsequent to the death of the institute or heir first mentioned, and who is entitled to disentail it without obtaining the consent of any subsequent heir or heirs or having the consent of any subsequent heir or heirs valued and dispensed with, dies:

(17.) Where an institute or heir of entail in possession of an entailed estate, who is not entitled to disentail such estate without either obtaining the consent of one or more subsequent heirs of entail or having the consent of such one or more subsequent heirs valued and dispensed with, has paid Estate Duty in respect of such estate, and afterwards disentails such estate, he shall be entitled to deduct from the value in money of the expectancy or interest in such estate of such one or more subsequent heirs, payable by him to them in respect of their consents having been granted or dispensed with a proper rateable part of the Estate Duty paid by him as aforesaid:

(18.) Where any person who pays Estate Duty on any property, and in whom the property is not vested, is by this Act authorized to raise such duty by the sale or mortgage of that property, or any part thereof, it shall be competent for such person to apply to the Court of Session—

(*a*) For an order of sale of the property or part of it, and in the event of the Court granting such order, it shall provide for the payment out of the price of the amount of the Estate Duty which has been paid by such person, and the Court shall thereafter make such order as to the disposal of the surplus, if any, of the price, by way of investment or otherwise, as to the Court shall seem proper; the Court may in such order specify the time and place at

which, the person by whom, and the advertisement or notice after which the sale shall be made, and may ordain the person in whom the property is vested to grant a disposition thereof in favour of the purchaser, and if the person in whom the property is vested refuses or fails to do so, the Court shall grant authority to the clerk of Court to execute such disposition, and such disposition so executed shall be as valid as if it had been executed by the person in whom the property is vested; or

(*b*) For an order ordaining the person in whom the property is vested to grant a bond and disposition in security over the property in favour of the person who has paid the Estate Duty, for the amount of the said duty, and if the person in whom the property is vested refuses or fails to do so, the Court shall grant authority to the clerk of Court, to execute such a bond and disposition in security, and such bond and disposition in security so executed shall be as valid as if it had been executed by the person in whom the property is vested, and shall be a first charge upon the property after any debt or incumbrance for which an allowance is directed to be made under this Act in determining the value of the property for the purpose of Estate Duty;

Provided also that summary diligence shall not be competent thereupon, and that nothing herein contained shall make the duty to be recovered by the methods of these subsections (*a*) and (*b*) recoverable at any earlier time than if it had been recovered by direct action against the person ultimately liable for the duty:

(19.) This Part of this Act shall apply to property in which the wife or husband of the deceased takes an estate of terce or courtesy or any other like estate in like manner as it applies to property settled by the will of the deceased.

Commencement.

Commencement of Part of Act.

24. This Part of this Act shall come into operation on the expiration of the first day of August one thousand eight hundred and ninety-four, in this Part of this Act referred to as the commencement of this Part of this Act.

PART VI.

Short Title.

42. This Act may be cited as the Finance Act, 1894.

SCHEDULES.

First Schedule.

EXISTING DUTIES REFERRED TO (Sections 1, 5, 13, 21).

1. The Stamp Duties imposed by the Customs and Inland Revenue Act, 1881 (44 & 45 Vict. c. 12), on the affidavit to be required and received from the person applying for probate or letters of administration in England or Ireland, or on the inventory to be exhibited and recorded in Scotland.
2. The Stamp Duties imposed by s. 38 of the Customs and Inland Revenue Act, 1881, as amended and extended by s. 11 of the Customs and Inland Revenue Act, 1889 (52 & 53 Vict. c. 7), on the value of personal or moveable property to be included in accounts thereby directed to be delivered.

A.D. 1894.

3. The additional Succession Duties imposed by s. 21 of the Customs and Inland Revenue Act, 1888 (51 & 52 Vict. c. 8).
4. The temporary Estate Duties imposed by ss. 5 and 6 of the Customs and Inland Revenue Act, 1889.
5. The duty at the rate of one pound per cent. which would by virtue of the Acts in force relating to Legacy Duty or Succession Duty have been payable under the will or intestacy of the deceased, or under his disposition or any devolution from him under which respectively Estate Duty has been paid, or under any other disposition under which Estate Duty has been paid.

Second Schedule.

ACTS REFERRED TO (Section 22 (*n*)).

Session and Chapter.	Title or Short Title.	Section referred to.
55 Geo. 3, c. 184 ..	The Stamp Act, 1815	Section thirty-eight.
56 Geo. 3, c. 56 ..	An Act the title of which begins with the words "An Act to repeal the several Stamp Duties," and ends with the words "managing the said duties."	Section one hundred and seventeen.
43 Vict. c. 14	The Customs and Inland Revenue Act, 1880.	Section ten.
44 & 45 Vict. c. 12 ..	The Customs and Inland Revenue Act, 1881.	Sections twenty-nine and thirty-two.

A.D. 1896.

FINANCE ACT, 1896. [59 & 60 VICT. c. 28.]

PART IV.

DEATH DUTIES.

Estate Duty.

Section.

14. Exception to passing of property on enlargement of interest of settlor.
15. Reverter of property to disponer.
16. Estate Duty on annuities.
17. Estate Duty on fractions of one hundred pounds.
18. Interest upon Estate Duty and other Death Duties.
19. Incidence of Settlement Estate Duty.
20. Objects of national, scientific, or historic interest.
21. Allowance of Succession Duty, etc., paid out of capital before commencement of 57 & 58 Vict. c. 30.
22. Appeal from County Court under 57 & 58 Vict. c. 30, s. 10.
23. Amendment of 57 & 58 Vict. c. 30, ss. 18, 23, as to certain heirs of entail in Scotland.
24. Commencement and construction of Part of Act.

A.D. 1896.

An Act to grant certain Duties of Customs and Inland Revenue, to alter other Duties, to amend the Law relating to Customs and Inland Revenue, and to make Provision for the Financial Arrangements of the Year. [7th August, 1896.]

Exception to passing of property on enlargement of interest of settlor.

14. Where property is settled by a person on himself for life, and after his death on any other persons with an ultimate reversion of an absolute interest or absolute power of disposition to the settlor, the property shall not be deemed for the purpose of the principal Act to pass to the settlor on the death of any such other person after the commencement of this Part of this Act, by reason only that the settlor, being then in possession of the property as tenant-for-life, becomes, in consequence of such death, entitled to the immediate reversion, or acquires an absolute power to dispose of the whole property.

Reverter of property to disponer.

15. (1.) Where by a disposition of any property an interest is conferred on any person other than the disponer for the life of such person or determinable on his death, and such person enters into possession of the interest and thenceforward retains possession thereof to the entire exclusion of the disponer or of any benefit to him by contract or otherwise, and the only benefit which the disponer retains in the said property is subject to such life or determinable interest, and no other interest is created by the said disposition, then, on the death of such person after the commencement of this Part of this Act, the property shall not be deemed for the purpose of the principal Act to pass by reason only of its reverter to the disponer in his lifetime.

(2.) Where by a disposition of any property any such interest as above in this section mentioned is conferred on two or more persons, either severally or jointly, or in succession, this section shall apply in like manner as where the interest is conferred on one person.

(3.) Provided that the foregoing sub-sections shall not apply where such person or persons taking the said life or determinable interest had at any time prior to the disposition been himself or themselves competent to dispose of the said property.

(4.) Where the deceased person was entitled by law to the rents and profits of real property (as defined by section one of the Succession Duty Act, 1853) of his wife, and has died in her lifetime, such property shall not be deemed for the purpose of the principal Act to pass on his death by reason of her then becoming entitled to the property in virtue of her former interest.

16 & 17 Vict. c. 51.

Estate Duty on annuities.

16. The Estate Duty due in respect of any annuity or other definite annual sum, whether terminable or perpetual, referred to in section two (1) (*d*) of the principal Act, may, at the option of the person delivering the account, be paid by four equal yearly instalments, the first of which shall be due at the end of twelve months from the date of the death, and after the end of those twelve months interest on the unpaid portion of the duty shall be added to each instalment and paid accordingly, but the duty for the time being unpaid, with interest to the date of payment, may be paid at any time.

Estate Duty on fractions of one hundred pounds.

17. Section seventeen of the principal Act shall have effect as if there were added at the end thereof the following proviso in substitution for the existing proviso as to fractional parts of ten pounds—

Provided that where the principal value of an estate comprises a fraction of one hundred pounds in excess of one hundred pounds, or of any multiple of one hundred pounds, such fraction shall be excluded from the value of the estate for the purpose of determining both the rate and the amount of duty, except that where the principal value of the estate exceeds one hundred pounds and does not exceed two hundred pounds the duty shall be one pound.

18. (1.) Simple interest at the rate of three per cent. per annum without deduction

A.D. 1896.

Interest upon Estate Duty and other Death Duties.

for income tax shall be payable upon all Estate Duty from the date of the death of the deceased, or, where the duty is payable by instalments, or becomes due at any date later than six months after the death, from the date at which the first instalment or the duty becomes due, and shall be recoverable in the same manner as if it were part of the duty.

(2.) The foregoing provision shall apply to the interest on all Death Duties as defined by section thirteen of the principal Act in like manner as if it were herein re-enacted and made applicable to those duties.

(3.) The Commissioners of Inland Revenue may remit the interest on any of such Death Duties where the amount appears to them to be so small as not to repay the expense and trouble of calculation and account.

Incidence of Settlement Estate Duty.

19. (1.) The Settlement Estate Duty leviable in respect of a legacy or other personal property settled by the will of the deceased shall (unless the will contains an express provision to the contrary) be payable out of the settled legacy or property in exoneration of the rest of the deceased's estate.

(2.) The Settlement Estate Duty leviable in respect of any such legacy or property shall be collected upon an account setting forth the particulars of the legacy or property, and delivered to the Commissioners by the executor within six months after the death, or within such further time as the Commissioners may allow.

Objects of national, scientific, or historic interest.

20. (1.) Where any property passing on the death of a deceased person consists of such pictures, prints, books, manuscripts, works of art, scientific collections, or other things not yielding income as appear to the Treasury to be of national, scientific, or historic interest, and is settled so as to be enjoyed in kind in succession by different persons, such property shall not, on the death of such deceased person, be aggregated with other property, but shall form an estate by itself, and, while enjoyed in kind by a person not competent to dispose of the same, be exempt from Estate Duty, but if it is sold or is in the possession of some person who is then competent to dispose of the same, shall become liable to Estate Duty.

(2.) The person selling the same, or for whose benefit the same is sold, and also the person being in possession and competent to dispose of the same, shall be accountable for the duty, and shall deliver an account, in accordance with section eight of the principal Act, in the case of a sale within one month after the sale, and in the case of a person coming into possession, or if in possession becoming competent to dispose, within six months after he so comes into possession, or becomes competent to dispose.

Allowance of Succession Duty, etc., paid out of capital before commencement of 57 & 58 Vict. c. 30.

21. Where on the death of a deceased person Estate Duty becomes payable by a person in respect of any property passing under a settlement made by a will or disposition which took effect before the commencement of the principal Act, and before that commencement any duty mentioned in paragraphs three to five of the First Schedule to the principal Act has been paid or is payable under the same will or disposition on the capital value of the property, the Commissioners of Inland Revenue shall allow the duty so paid or payable as a deduction from the Estate Duty to the extent to which it has been paid or is payable in respect of the property on which Estate Duty is payable.

Appeal from County Court under 57 & 58 Vict. c. 30, s. 10.

22. There shall be added to sub-section five of section ten of the principal Act the following proviso—

Provided that in every such case any party shall have a right of appeal to Her Majesty's Court of Appeal.

Amendment of 57 & 58 Vict. c. 30, as to certain heirs of entail in Scotland.

23. The Finance Act, 1894, shall be construed as if there were added in section twenty-three thereof, after sub-section fifteen, the following enactment—

Provided that for the purposes of section eighteen of this Act such institute or heir of entail shall not be deemed to be a person competent to dispose of such estate, unless he is entitled to disentail it without obtaining the consent of any subsequent

heir of entail, or having the consent of any subsequent heir valued and dispensed with. A.D. 1896.

24. (1.) Unless the context otherwise requires—

(*a*) This part of this Act shall come into operation on the first day of July one thousand eight hundred and ninety-six, which day is in this Part of this Act referred to as the commencement of this Part of this Act; and Commencement and construction of Part of Act.

(*b*) The expression "deceased person" means a person dying after the commencement of this Part of this Act;

(2.) Part I. of the Finance Act, 1894, is in this Act referred to as "the principal Act."

PART VII.

Miscellaneous.

Construction of Act.

39. . . . Part Four of this Act shall be construed together with Part One of the Finance Act, 1894 (57 & 58 Vict. c. 30).

Repeal of Acts.

40. The Acts mentioned in the schedule to this Act are hereby repealed to the extent in the third column of that schedule mentioned.

Short Title.

41. This Act may be cited as the Finance Act, 1896.

SCHEDULE. A.D. 1896.

Acts Repealed (Section 40). Section 40.

PART III.

Death Duties.

Session and Chapter.	Short Title.	Extent of Repeal.
31 & 32 Vict. c. 124	An Act to amend the laws relating to the Inland Revenue.	In section nine, from "at the rate of four pounds," to "as part thereof."
57 & 58 Vict. c. 30	The Finance Act, 1894.	Section six, in sub-section six, the words "at the rate of three per cent. per annum," and the words "and shall form part of the Estate Duty," and in sub-section eight, the words "less income tax." Section eight, sub-section ten. Section seventeen, from "provided that" to the end of the section.

A.D. 1898.

FINANCE ACT, 1898. [61 & 62 VICT. c. 10.]

An Act to grant certain Duties of Customs and Inland Revenue, to alter other Duties, and to amend the Law relating to Customs and Inland Revenue, and to make other Provision for the Financial Arrangements of the Year. [1st July, 1898.]

PART V.

ESTATE DUTIES.

Persons not *sui juris* not to be deemed competent to dispose for the purpose of breaking settlements.

13. Section five, sub-section two, of the Finance Act, 1894, shall be read and have effect as if the following words had been inserted at the end thereof, "and who if on his death subsequent limitations under the settlement take effect in respect of such property was *sui juris* at the time of his death or had been *sui juris* at any time while so competent to dispose of the property."

Settlement Estate Duty repayment.

14. Where in the case of a death occurring after the commencement of this Act Settlement Estate Duty is paid in respect of any property contingently settled, and it is thereafter shown that the contingency has not arisen, and cannot arise, the said duty paid in respect of such property shall be repaid.

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